(1) 90-805
Supreme Court, U.S.
FILED
NOV 21 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF SAN LUIS OBISPO and CITY OF SANTA CRUZ,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

PHILIP K. VERLEGER
(Counsel of Record)
DONNA R. BLACK
BRADLEY R. HOGIN
BAKER & HOSTETLER,
McCUTCHEN BLACK
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Counsel for Petitioners Western States Petroleum Association and National Ocean Industries Association

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. May a state (and, a fortiori, a city or county) forbid the use of land within its borders to process oil and gas produced in the federal outer Continental Shelf ("OCS") and forbid the use of land or activities within its borders to support production of oil and gas from the OCS, unless such use or activities are approved by a referendum?

2. Does a lawsuit challenging such ordinances become moot when the first such project loses a referendum, and its owners then seek to support their leases from an adjoining county, and (a) there are other leases being developed in the vicinity of the first project but at less advanced stages, (b) this suit is brought by a trade association, whose members hold some 50 federal leases offshore of cities and counties having such ordinances, which require onshore facilities to support exploration and development activities, and (c) the suit is joined by a trade association representing support contractors who will lose work if development does not go forward?

3. Is such a lawsuit ripe?

PARTIES

The parties to this case in the Court of Appeals were the two plaintiffs, the Western Oil and Gas Association, now known as the Western States Petroleum Association, and the National Ocean Industries Association; the ten defendants, Sonoma County, San Mateo County, Monterey County, San Luis Obispo County, County of Santa Cruz, City and County of San Francisco, City of Monterey, City of Morro Bay, City of San Luis Obispo and City of Santa Cruz; and the three intervenor-defendants, the State of California acting by and through the California Coastal Commission and the California State Lands Commission, Natural Resources Defense Council and The League for Coastal Protection. The companies holding membership in petitioners Western States Petroleum Association and National Ocean Industries Association are listed in App. L.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES	ii
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	5
A. Background	7
B. Proceedings Below	9
REASONS FOR GRANTING THE WRIT	13
I. THE NATIONAL INTEREST URGENTLY DEMANDS A PROMPT RESOLUTION OF THIS CONTROVERSY	13
II. THE EFFECT OF THE COURT OF APPEALS' DECISION IS PRACTICABLY TO FORECLOSE CHALLENGE OF THE SUBJECT ORDINANCES	15
III. THE ORDINANCES ARE VOID ON THEIR FACE UNDER THE SUPREMACY AND COMMERCE CLAUSES	18
IV. THE COURT OF APPEALS IS PLAINLY IN ERROR WITH RESPECT TO MOOTNESS	19
V. THE COURT OF APPEALS' DECISION IS EQUALLY INCONSISTENT WITH THE LAW APPLICABLE TO RIPENESS	22
CONCLUSION	26

TABLE OF AUTHORITIES

CASES: Page

Abbott Laboratories v. Gardner, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed. 2d 681 (1967) 23
American Petroleum Institute v. Knecht, 456 F.Supp. 889 (C.D. Cal.), aff'd 609 F.2d 1306 (9th Cir. 1978) 22
Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 104 S.Ct. 2694, 81 L.Ed. 2d 580 (1984) 18
Fidelity Fed. Savings & Loan Ass'n v. De La Cuesta, 458 U.S. 141, 102 S.Ct. 3014, 73 L.Ed. 2d 664 (1982) 18
Franks v. Bowman Transportation Co., Inc., 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed. 2d 444 (1976) .. 21, 22
Hicklin v. Orbeck, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed. 2d 397 (1978) 18
Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941) 18
Hunt v. Washington State Apple Advertising Comm., 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed. 2d 383 (1977) 22
Lawrence County v. Lead-Deadwood School District, 469 U.S. 256, 105 S.Ct. 695, 83 L.Ed. 2d 635 (1985) 18
Maryland v. Louisiana, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed. 2d 576 (1981) 18
Natural Resources Defense Council v. Hodel, 865 F.2d 288 (D.C. Cir. 1988) 8
Pacific Gas & Electric Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190, 103 S.Ct. 1713, 75 L.Ed. 2d 752 (1983) 24, 25
Pennsylvania v. West Virginia, 262 U.S. 553, 43 S.Ct. 658, 67 L.Ed. 1117 (1923) 18
Secretary of the Interior v. California, 464 U.S. 312, 104 S.Ct. 656, 78 L.Ed. 2d 496 (1984) 8
Sosna v. Iowa, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed. 2d 532 (1974) 21, 22
Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911) 21
State of California v. Kleppe, 604 F.2d 1187 (9th Cir. 1979) 8

TABLE OF AUTHORITIES—Continued

	Page
United States Parole Comm'n v. Geraghty, 445 U.S. 388, 100 S.Ct. 1202, 63 L.Ed. 2d 479 (1980)	21
Warth v. Seldin, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed. 2d 343 (1975)	22
Weinstein v. Bradford, 423 U.S. 147, 95 S.Ct. 2394, 44 L.Ed. 2d 664 (1975)	21
West v. Kansas Natural Gas Co., 221 U.S. 229, 31 S.Ct. 564, 55 L.Ed. 716 (1911)	18
STATUTES	
28 U.S.C. § 1254(1)	2
43 U.S.C. § 1331	2
43 U.S.C. § 1332	2, 3, 14, 26
43 U.S.C. § 1334	14
43 U.S.C. § 1345	3, 4, 14
43 U.S.C. § 1346	14
43 U.S.C. § 1351	14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF SAN LUIS OBISPO and CITY OF SANTA CRUZ,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

The Western States Petroleum Association and the National Ocean Industries Association hereby petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 905 F.2d 1287 (9th Cir. 1990) (App. B). The opinion issued prior to rehearing is found at App. A. The district court's memoranda of decision (Apps. C and D) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 11, 1990. A timely petition for rehearing was denied on August 23, 1990, with an accompanying amendment of the opinion. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1331 *et seq.*, in pertinent part provides:

> "It is hereby declared to be the policy of the United States that—
>
> (1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;
>
> * * * *
>
> (3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;
>
> (4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environment—
>
> * * * *
>
> (C) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for,

and development and production of, minerals of the outer Continental Shelf;

(5) the rights and responsibilities of all States, and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized;

. . . .

43 U.S.C. § 1332.

"(a) . . . . Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

* * * *

(c) . . . . The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

> (d) . . . The Secretary's determination that recommendations provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious."
>
> 43 U.S.C. § 1345.

Section 1 of the ordinance of the County of San Luis Obispo provides in part:

> "No permit, entitlement, lease, or other authorization of any kind within the County of San Luis Obispo which would authorize or allow the development, construction, installation, or expansion of any onshore support facility for offshore oil and gas activity shall be final unless such authorization is approved by a majority of the votes cast by a vote of the people of the County of San Luis Obispo in a general or special election. For the purpose of this ordinance, the term 'onshore support facility' means any land use, installation, or activity required to support the exploration, development, production, storage, processing, transportation, or related activities of offshore energy resources."

Section 17.72.030 of the ordinance of the City of Morro Bay provides in part:

> "There shall be no construction, reconstruction, operation or maintenance of any commercial or industrial facility within the City, including but not limited to business or personnel offices, oil or gas storage facilities, pipe, drilling materials, or equipment repair or storage facilities, or any other aid or support, which operates directly or indirectly in support of any offshore oil or gas exploration, development, drilling, pumping or production; nor shall there be any construction, reconstruction, operation or maintenance of any pipeline within the City for the trans-

> mission of any oil or natural gas taken or removed from any offshore oil or gas drilling or pumping operations."

Section 17.92.020 of the ordinance of the City of San Luis Obispo provides in part:

> "No onshore support facility for offshore oil or gas development shall be allowed or permitted within the City of San Luis Obispo until such time that the City Council proposes the inclusion of such uses in an appropriate zone district or districts, and such proposal has been approved by a vote of the people of the City of San Luis Obispo. For the purpose of this ordinance, the term 'onshore support facility' means any activity or land use required to support directly the exploration, development, production, storage, processing, transportation, or related aspects of offshore energy resources extraction."

STATEMENT OF THE CASE

This is a case which challenges ordinances intended to prevent the development of federal offshore oil and gas leases by denying lessees the right to bring the oil and gas onshore. The immediate problem is that the district court and the Court of Appeals have used concepts of Article III ripeness and mootness to close the door to any reasonably possible challenge, thus effectively validating the ordinances.

Petitioner Western States Petroleum Association ("WSPA") is a trade association including in its membership substantially all of the companies engaged in oil and gas exploration and production on the outer Continental Shelf ("OCS") offshore of California. Petitioner National Ocean Industries Association ("NOIA") is a trade association representing substantially all of the companies and individuals who provide drilling, provisioning and other essential services to offshore operations. This action, brought by the two trade associations (collectively referred to herein as "WSPA"), challenges

an ordinance of the County of San Luis Obispo which provides that no permit may be issued for any land use which supports offshore oil exploration, development or production unless the permit in question is approved by a referendum of the citizens of the County. The City of San Luis Obispo and the City of Morro Bay, relevant here because of their role as logistical support bases for operations offshore San Luis Obispo County, have adopted similar ordinances.

WSPA's member companies are the owners of upwards of 50 oil and gas leases offshore San Luis Obispo County and have paid approximately $2.4 billion for these leases. App. H at 85a. Several of these companies own what is known as the San Miguel project, operated by a subsidiary of Shell Oil Company ("Shell"), located on lease OCS-P 0409. After all applicable permits were obtained but before a referendum was held on the San Miguel project, as required by the San Luis Obispo ordinance, the district court ruled (a) that the case was not ripe, resting its decision at least in part on the fact that no project had thus far lost an election, and (b) that the ordinance was valid. App. C at 46a-50a. Shortly following that decision, an election was held and the project was defeated. App. F at 61a-62a. WSPA filed a motion to reconsider and for leave to file a second amended complaint alleging loss of the election which was denied on the ground the election made no difference. App. D at 54a.

On appeal, the Ninth Circuit remanded the San Luis Obispo portion of the case to the district court for further findings, reciting that the record suggested that the San Miguel project is now being serviced from Santa Barbara and therefore that the case might be moot. The Court of Appeals' decision thus necessarily decided that the pendency of the leases held both for this project and for other projects in San Luis Obispo was not enough: it was necessary that there be a current "proposed de-

velopment" pending in San Luis Obispo County before that County's ordinance could be challenged.

That decision creates a critical need for review by this Court. The principles adopted, which form the basis for the direction to the district court to make additional findings, would establish criteria which necessarily completely defeat any prospect of challenging these ordinances. Ownership of affected leases even with ongoing development is passed over as a ground for standing or ripeness. A current project to come ashore is needed, but is only a basis for challenging an ordinance after an election is held. Once defeated, the current project will not suffice if some other solution is subsequently pursued. The result is that there is no window of opportunity to sue. Such a holding would defeat the long-established policy of the United States which mandates development of the OCS.

Oil is of no use to anyone if it cannot be brought ashore. If the holders of leases have to spend the amounts required to explore them, knowing all the time that they have to win a referendum (an improbable event) before they can possibly do anything with the oil they are searching for, the question arises: why search? An enormous obstacle to the development of the federal leases is thus placed in their path. Assuming, after lessees have gone through the permitting process, lost an election, and then been forced to look around for some other alternative, that they are at that point also precluded from challenging the ordinance, then such an ordinance becomes unchallengeable. Given the adoption by Congress of policies requiring the development of such leases, this is a plain, significant and most destructive assault on federal power.

A. Background

It is surely no news that while on the one hand, federal statutes speak in no uncertain terms of the import-

ance of the development of the OCS, there is an almost universal desire that such development take place somewhere else. The result is an inevitable conflict between federal authorities and oil companies on the one hand, and local jurisdictions who do not want such development on the other hand. Such conflicts have had a long judicial history in both this Court and the Court of Appeals: a few of the cases are *Secretary of the Interior v. California*, 464 U.S. 312, 104 S.Ct. 656, 78 L.Ed. 2d 496 (1984); *Natural Resources Defense Council v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988); and *State of California v. Kleppe*, 604 F.2d 1187 (9th Cir. 1979).

This case arises out of the adoption, in the late 1980's, of similar ordinances in every California county along the coast except for Santa Barbara, Ventura, Los Angeles and parts of Orange County. These ordinances fall into two categories. They either (a) forbid outright the bringing of oil produced offshore onto the land, or (b) require that permits for facilities to bring such oil ashore be subjected to a referendum. Texts of the ordinances appear in App. J at pages 110a through 188a.

The purpose of these ordinances has been announced by their proponents in very straight-forward terms. Hostility to offshore development is the theme: the basic text is that while the federal government may control the water, the states and local governments control the land. For example, the Santa Cruz County ordinance provides that:

> "The citizens of Santa Cruz County have no legal way directly to control offshore oil and gas exploration or development, since oil and gas developments which occur offshore are under the jurisdiction of the federal government. The citizens of Santa Cruz County do, however, have the legal ability to make significant decisions about onshore facilities which support offshore oil and gas exploration and development."
>
> App. J at 161a.

In the words of a principal advocate of these ordinances: "There will be nowhere they [oil producers] can come ashore. It [the ordinance] sends that message loud and clear." ER 35 at Ex. C ("ER" refers to the record excerpts on appeal). "Strong opposition to any oil or gas drilling" is the stated purpose of the Monterey ordinance (App. J. at 168a); the Sonoma County ordinance expresses "strong current opposition . . . to proposed offshore oil developments." App. J at 111a. There has been a wave of such ordinances adopted, which probably has not yet reached its peak.

Of these various ordinances, only three—in San Luis Obispo County, the City of San Luis Obispo and the City of Morro Bay—directly affect current lessees of the United States. It is those leases and those ordinances which give rise to the issues here. However, the other ordinances are important, too. What is involved is an attempt to wall off oil produced from federal leases from the Mexican to the Oregon border: this is nothing less than a threat of nullification of an Act of Congress along almost the entire coastline.

B. Proceedings Below

The case was decided in the district court on defendants' motion to dismiss plaintiffs' first amended complaint and on plaintiffs' motion for summary judgment. The district court granted the motion to dismiss the complaint and denied the summary judgment motion. App. C at 46a-50a. The first amended complaint alleged the representative status of WOGA, now WSPA, and NOIA. Defendants in the case as filed were (a) the cities and counties with ordinances forbidding outright the presence of support facilities onshore for offshore operations, including the City and County of San Diego and the City of Oceanside, and (b) the cities and counties which require that every permit for construction or use of any facility for onshore support of any offshore

facility be approved by voters in a referendum, including Sonoma County, San Mateo County, Monterey County, San Luis Obispo County, Santa Cruz County, City and County of San Francisco, City of Monterey, City of Morro Bay, City of San Luis Obispo and City of Santa Cruz.

As to San Luis Obispo County (and the City of Morro Bay and City of San Luis Obispo), it was alleged that WSPA members are the owners of upwards of 50 leases offshore of that County and have expended more than $2.4 billion for purchase of the leases. App. H at 85a. It was alleged that onshore pipelines, treatment facilities and logistic bases in the defendant areas are essential for production of oil and gas from these leases. App. I at 93a-94a; 96a-97a.

It was also alleged that a group of WSPA members operate what is known as the San Miguel project; that a platform had been built at a cost of $160 million for production from the lease; and that necessary permits had been applied for from the County of San Luis Obispo for the project. *Id.* at 97a. It was further alleged, under the County's ordinance requiring a vote, that the project was to be submitted to an election and that the result was a threatened loss of the entire investment and a certain delay of at least a year at a cost of approximately $14 million. *Id.* at 97a. It was further alleged that there are following behind at least five additional projects on which discoveries have been made off San Luis Obispo County in other groups of leases. *Id.*

As to the other counties, it was alleged that federal offshore lease sales were pending at which plaintiffs' members had the right to bid and that substantial amounts had been invested in preparing for these sales. *Id.* at 97a-98a. It was further alleged that since oil that cannot be brought ashore is without value, the effect of the ordinances was to destroy or impair the right to bid. *Id.*

Violations of the Supremacy Clause, the Commerce Clause, the Due Process Clause and the Equal Protection Clause were pleaded. *Id.* at 99a-109a. The first amended complaint was accompanied by a motion for summary judgment seeking a determination that the ordinances were invalid, which was supported by declarations making essentially the same statements as the complaint, albeit in greater detail. It was opposed by declarations from defendants addressing possible problems from the presence of onshore facilities; asserting that there are places in California where such facilities could be built; and further asserting that it is possible to operate offshore without coming onshore by producing into a floating storage and treatment system. ER 62. There was no response, however, to the allegation in the complaint that because of local and state opposition, use of such a system is generally precluded. There was also no response to plaintiffs' assertion that natural gas is a significant part of the offshore production and must come directly onshore. App. H at 84a. The United States lodged an amicus brief supporting plaintiffs. Leave to file the United States' brief was denied because of the late date of the filing. ER 91.

The district court denied plaintiffs' motion for summary judgment and granted defendants' motion to dismiss except as to the City and County of San Diego and the City of Oceanside.[1] As to all other counties, the district court concluded (a) that the ordinances were valid, and (b) in the alternative, that the controversy was not

---

[1] These cities and San Diego County have ordinances absolutely prohibiting the construction of any facilities and the importation of any petroleum produced from within 100 miles of their borders on the OCS. The district court ruled that whether or not those ordinances were valid was dependent on whether there was any less drastic method of accomplishing their objectives. The case as to these ordinances was severed pursuant to Fed. R. Civ. Pro. 42(b) and is not involved in this appeal. It has been stayed pending a decision in this case.

ripe because no one had thus far lost an election and because, even then, losers could pursue other possible remedies, principally review of an adverse municipal decision by the California Coastal Commission.

Before the judgment was final, the group of WSPA companies with applications pending before the County of San Luis Obispo lost the election on its project and was therefore denied permits. Plaintiffs thereafter filed a motion for leave to file a second amended and supplemental complaint setting forth that loss and a motion to reconsider the prior decision. ER 101. Under date of September 6, 1988, the district court denied both motions and issued a final judgment. App. D. A Notice of Appeal was filed under date of October 28, 1988. ER 119.

After the case was on appeal, the President issued an order suspending the previously scheduled lease sales offshore of California, which order was followed by an Act of Congress declaring a moratorium on all such sales which was recently renewed. This left San Luis Obispo County (and the cities of San Luis Obispo and Morro Bay within that County) as the only involved area with active leases off the coast. Since, as to the other counties (all north of San Luis Obispo), the economic harm to plaintiffs' members consisted of deprivation of the right to bid at lawfully scheduled federal sales, plaintiffs/appellants moved to dismiss as moot the appeals as to all cities and counties other than San Luis Obispo, the City of San Luis Obispo and the City of Morro Bay. On this issue, the Court of Appeals ruled that the actions were not moot, because of the possibility of a recurrence of the controversy, but that in view of the fact that there were no lease sales pending, the actions were plainly not ripe as to the northern counties and on that ground affirmed the district court. App. A at 7a-8a. On petition for rehearing (denied), it vacated the judgment on the merits as to those counties. App. B at 18a. For purposes of this petition, we do not challenge that ruling.

As to the County of San Luis Obispo, the Court of Appeals expressed a belief that there was material in the record which suggested that the San Miguel project proponents had abandoned the effort to come ashore in San Luis Obispo County and were "servicing the leases" from Santa Barbara County to the south. It sent the case back to the district court for findings on that subject, as determinative of mootness. By so ruling, the court decided that those who hold leases from the United States offshore of San Luis Obispo County do not have a ripe controversy if they have not yet reached the stage of an actual project submitted to the County (otherwise the status of the San Miguel project could not moot the case). Accordingly, the judgment was affirmed without comment as to the cities of San Luis Obispo and Morro Bay, where there are no permit applications pending. In addition, the Court of Appeals' decision says, in effect, that the proponents of a project actually submitted and lost in such an election will be mooted out, either if they simply stop, or if they try to pursue some other solution while continuing with their lawsuit.

REASONS FOR GRANTING THE WRIT

I. THE NATIONAL INTEREST URGENTLY DEMANDS A PROMPT RESOLUTION OF THIS CONTROVERSY

Estimates of the amount of oil to be found in and to be produced from the OCS off California vary widely. The Department of Energy's estimate of four billion barrels in reserves (*i.e.*, enough to produce close to a million barrels a day for 10 to 15 years) is pleaded in the complaint. App. I at 93a. A declaration supporting the complaint estimated that potential reserves may be as high as ten billion barrels. ER 12 at 6. Until exploration is complete, all estimates are, at best, enlightened guesses. But there is no doubt reserves are substantial. Whatever the numbers may be, Congress has stated in

the plainest of terms that the national policy requires the development of these resources. The OCSLA thus recites:

> "It is hereby declared to be the policy of the United States that—
>
> (3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs . . . ."
>
> 43 U.S.C. § 1332.

The national interest in this lawsuit was articulated in the amicus brief filed by the United States in the Court of Appeals, at p. 3.

> "The United States has a significant interest in the development of the OCS. In addition to reducing our nation's dependence on foreign sources of oil (see 43 U.S.C. 1801(3) and 1802(1)), OCS oil and gas resources off California have provided substantial benefits to the treasuries of both the United States and California."

The OCSLA recognizes the importance not only of development but of simultaneous protection of the environment and provides an elaborate mechanism for accomplishing this. 43 U.S.C. §§ 1346, 1351. Likewise, the OCSLA provides for a reconciliation of local interests, which tend to oppose development, to the national interest. In this regard, the Act requires submission of the federal plans to the Governor of the affected state and provides a mechanism for adjusting differences of opinion between the Secretary of Interior and the State. *Id.* at § 1345. Only after that process is fully pursued is a particular lease sale permitted. But the Secretary of the Interior is most specifically authorized and directed to conduct such sales. *Id.* at § 1334.

If one has any doubts as to the significance of that policy, one need only read the daily newspapers. This Court is well aware that Iraq's invasion of Kuwait and the responsive boycott of Iraqi and Kuwaiti oil by the entire world community have cut several million barrels a day out of the world's oil supply. The result is that crude oil prices in the world markets have jumped by 100%. Actual deficits in supply giving rise to lines in service stations and unfilled heating oil demands have thus far narrowly been averted. If the crisis goes farther and embraces Saudi Arabia, however, what has happened so far will be a comparative picnic.

This is not the first such crisis and it will not be the last. The United States went through a similar set of problems in the early 1970's with the Arab oil boycott, again with the overthrow of the Shah of Iran and again as a result of the war between Iran and Iraq. Without further belaboring the point, we submit that the federal government has had every reason to show the concern over "expeditious and orderly development" of the OCS so plainly expressed in the OCSLA. This in turn means there is every reason, in the national interest, to urge the earliest possible resolution of the validity of local ordinances that say to the federal government, issue leases off our shores if you wish, but your act will be futile because your lessees will not be able to bring the oil ashore.

II. THE EFFECT OF THE COURT OF APPEALS' DECISION IS PRACTICABLY TO FORECLOSE CHALLENGE OF THE SUBJECT ORDINANCES

The decision below effectively decides that possession of a lease is not sufficient to enable a company to challenge these ordinances, even if enormous amounts have been spent on purchase, exploration and development of the lease. Before one has the right to challenge San Luis Obispo's ordinance, for example, one must have a specific "proposed development" in the County.

Despite the showing made in the district court (without challenge) that WSPA members hold many active lease offshore of San Luis Obispo County, the Court of Appeals discussed only the San Miguel project. It observed that Shell had lost the election and that the election had been "nullified" by the County for reasons that "were not clear." The court then referred to a mention in the record which suggested that Shell had therefore shifted its attentions to Santa Barbara County and sent the case back to the district court for further detail on that subject, saying that the record "suggests that the controversy including Shell's lease may be moot." App. B at 18a. It also observed that there was "no other development proposed." App. B at 18a. It affirmed the dismissal without separate comment as to the City of Morro Bay and the City of San Luis Obispo.

By so doing, the court decided that the holders of the other leases off San Luis Obispo, despite their investments and despite the fact that this was the place they had chosen to come ashore, could not challenge the ordinance. On petition for rehearing, WSPA expressly pointed out, even though the Court of Appeals in its initial opinion had observed that there were "no leases" offshore of the northern counties and therefore no ripe controversy (*see* App. A at 7a), that there unquestionably were active leases off San Luis Obispo County. There was no direct response to this in the amended opinion issued on rehearing. Despite this, the decision clearly stands for the proposition that leases are not enough: there must be a "development" which has reached the permit application stage. Were that not the ruling, the case could not have been affirmed as unripe as to the cities of San Luis Obispo and Morro Bay, and with respect to all leases offshore of the County except the lease involved in the San Miguel project.

The problem with this analysis is that, after Shell's experience, it is clear that there is no rational prospect of winning an election in San Luis Obispo County. In-

deed, given the popular convictions expressed in the ordinances themselves, there is probably no prospect of winning such an election in any of these cities or counties. That being so, no rational management is going to pursue a project to come ashore there. The companies, inevitably, will make their judgments as to the economic feasibility of development on the basis of coming ashore in Santa Barbara County or somewhere further south. While getting approval in those areas has its own particular difficulties, and those difficulties coupled with the distances between the project and the support base may make such projects uneconomic, there is at least no outright prohibition and no requirement of a referendum on every permit. But the result is that the ordinances will accomplish their objective of closing the door to San Luis Obispo County and its cities and yet never be subject to challenge.

The case of the San Miguel project adds to the outrageousness of the result. The only purpose expressed for sending the case back to the district court for findings on the state of the project with respect to Santa Barbara County is to find out if the case would be "moot." But, we submit, what else is a company to do having gone down to defeat in San Luis Obispo County? For whether or not the election was "nullified" as the Court of Appeals says hardly matters: the election sufficiently demonstrated the popular will. Further efforts in San Luis would plainly be a waste of time and would cost a great deal of money. And why indeed should the companies be precluded from "servicing" a lease from an adjacent county, pending a determination of the validity of the ordinance which kept them out of San Luis Obispo in the first place? The effect of the ruling is to prevent a challenge permanently. The loser of the election will be mooted out: others will never reach the stage of applying because they cannot win. This is a result totally contrary to the rulings of this Court.

III. THE ORDINANCES ARE VOID ON THEIR FACE UNDER THE SUPREMACY AND COMMERCE CLAUSES

It is well-established that a state or county may not throw up a wall designed to keep out oil produced on the OCS. Fundamental barriers exist to any such set of ordinances both under the Supremacy Clause and the Commerce Clause. Under the Supremacy Clause, a state or local ordinance which has the effect of frustrating a federal policy is plainly invalid. *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 698, 104 S.Ct. 2694, 81 L.Ed. 2d 580 (1984); *Lawrence County v. Lead-Deadwood School District*, 469 U.S. 256, 260, 105 S.Ct. 695, 83 L.Ed. 2d 635 (1985); *Fidelity Fed. Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 156, 102 S.Ct. 3014, 73 L.Ed. 2d 664 (1982).

Equally applicable is the rule which denies to the states the power to wall out interstate commerce. *Hicklin v. Orbeck*, 437 U.S. 518, 531-34, 98 S.Ct. 2482, 57 L.Ed. 2d 397 (1978); *Pennsylvania v. West Virginia*, 262 U.S. 553, 595-600, 43 S.Ct. 658, 67 L.Ed. 1117 (1923); *West v. Kansas Natural Gas Co.*, 221 U.S. 229, 260, 31 S.Ct. 564, 55 L.Ed. 716 (1911). There can be no doubt that transportation of oil from the OCS into the states is interstate commerce.[2] *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed. 2d 576 (1981).

We recognize that, rather than decide the merits, the Court of Appeals vacated the district court's judgment

---

[2] Defendants attempted to evade this issue by urging that state production from within the three mile limit offshore is also embraced. However, there have been no state leases offered in California for thirty years. There are no new state projects and there will be none under California legislative and administrative policies. The only application of the ordinances is to interstate commerce.

on the merits, dismissing all aspects of the case other than the "Shell lease" as unripe. By so doing, the Court of Appeals eliminated the possibility that the district court opinion would be res judicata except possibly (depending on future action) as to the "Shell lease." But that action leaves the district court opinion as the only judicial expression on the topic and it will therefore be the only authority to which anyone seeking to develop offshore can refer. By effectively preventing any challenge to the ordinances at any practicable time, the Court of Appeals has permanently preserved the result of the district court decision. Under the circumstances, we respectfully urge that this Court grant certiorari to resolve both the merits and the issue of mootness/ripeness.

IV. THE COURT OF APPEALS IS PLAINLY IN ERROR WITH RESPECT TO MOOTNESS

The Court of Appeals sent the case back to the district court for further factual development relevant to mootness. It said:

> "Offshore of San Luis Obispo, Shell Oil Company, a member of appellant WOGA, has obtained an OCS lease which it originally proposed to develop and service with onshore facilities in San Luis Obispo County. At one point, Shell applied for a permit under the San Luis Obispo ordinance which appears to have been denied by a popular vote. The election was nullified by the County, however, for reasons that the record does not make clear. The record suggests that Shell has abandoned the San Luis Obispo project, that no other development has been proposed, that a new vote was never held, and that the offshore San Luis Obispo lease is now being serviced from onshore facilities in Santa Barbara County. Although the record suggests that the controversy involving Shell's lease may be moot, we cannot be certain because the relevant facts are not adequately developed in the record before us. Accordingly, we

remand the question of mootness with respect to Shell's lease offshore San Luis Obispo County."

App. B at 18a.

The difficulty with all this is that the findings requested have little to do with mootness. The showing here indubitably establishes such injury. The Court of Appeals itself recognized, in dealing with the northern counties, that likelihood of recurrence is the criterion for mootness and found that the lawsuit as to the other counties was not moot, because of the possibility of the recurrence of the same controversy. It said:

"We agree with appellees that actions are not moot when the issues they concern are likely to recur. Our court has consistently held that when a controversy is an on-going one, the case has not become moot. In *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431 (9th Cir. 1987), we held that a case had not become moot because, despite growing accord between the parties, continuing controversy remained. Earlier, we held in *Seay v. McDonnell Douglas Corp.*, 533 F.2d 1126, 1130 (9th Cir. 1976), that a defendant's voluntary cessation of wrongdoing did not render the case moot because it provided no assurance that the alleged wrongdoing would not recur. Both these cases support the more general proposition that when the possibility of controversy remains, the case is not yet moot. The Third Circuit has explicitly held that 'an appeal will not be deemed moot if there is a reasonable likelihood that the parties will contest the same issues in a subsequent proceeding.' *Hooker Chem. Co. v. EPA*, 642 F.2d 48, 52 (3d Cir. 1981) (citing *Klein v. Califano*, 586 F.2d 250, 255-56 (3d Cir. 1978) (en banc)). We agree with the position of the Third Circuit and hold that because appellants concede that contested issues could arise again, controversy still smolders. The case, therefore, cannot be moot."

App. B at 15a-16a.

There are no leases offshore of the other counties. The possibility of recurrence exists as to those counties because plans to offer such leases have been approved and stand to be implemented someday, even though those plans are currently stalled by the leasing moratoria. It simply cannot be true that the case of the northern counties (where there are no leases) is not moot because of the possibility of lease sales while the controversy as to San Luis Obispo is moot even though there are existing leases currently undergoing development.

To start with, it is fundamental, as this Court itself has observed, that a lawsuit is not moot if the problem is capable of repetition and a decision on mootness would defeat review. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 398-400, 100 S.Ct. 1202, 63 L.Ed. 2d 479 (1980); *Weinstein v. Bradford*, 423 U.S. 147, 149, 95 S.Ct. 2394, 44 L.Ed. 2d 664 (1975); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911). And, where a case is brought in a representative capacity on behalf of a class or group of plaintiffs, the probability of recurrence is determined by reference to the entire class. Thus, in *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed. 2d 532 (1974), this Court had before it a class action challenging Iowa's residency laws for divorce. By the time the case reached the Supreme Court, the plaintiff had been in Iowa long enough to meet the residency requirement. This Court concluded the case was not moot, because appellant "sought to litigate the constitutionality of the durational residency requirement in a representative capacity." *Id.* at 399. In *Franks v. Bowman Transportation Co., Inc.*, 424 U.S. 747, 752-57, 96 S.Ct. 1251, 47 L.Ed. 2d 444 (1976), this Court went farther and allowed the representative action even where the individual representative himself had been shown to have no claim.

This is a representative action brought on behalf of the industry as a whole. WSPA and NOIA sue by virtue

of the right of an association to bring suit if its members suffer or are threatened with injury. *See Hunt v. Washington State Apple Advertising Comm.*, 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed. 2d 383 (1977); *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed. 2d 343 (1975); *American Petroleum Institute v. Knecht*, 456 F.Supp. 889 (C.D. Cal.), *aff'd* 609 F.2d 1306 (9th Cir. 1978). It is alleged in the complaint and not denied that there are outstanding leases held by WSPA's members and numerous service companies who are deprived of the opportunity to work on those leases, represented by NOIA. The complaint further alleges that discoveries have been made in at least five different units formed of those leases and that projects are ongoing. App. I at 97a. On the motion for summary judgment, the Henderson Declaration identified another project, the Lion Rock Unit, which was in progress. App. H at 86a. It was set forth that the elimination of local onshore facilities is effectively a prohibition of offshore operations. *Id.* Such facilities are needed, not only for processing of produced oil, but as logistical support, *e.g.*, helicopter and boat bases for exploration activities which take place before development. *Id.* at 87a. Under *Sosna v. Iowa*, *supra*, and *Franks v. Bowman Transportation Company*, *supra*, the concept of mootness has no application in this case.

V. THE COURT OF APPEALS' DECISION IS EQUALLY INCONSISTENT WITH THE LAW APPLICABLE TO RIPENESS

While the Court of Appeals spoke of "mootness," it seems to us more likely that what it probably had in mind was concepts of ripeness. The statement that there are "no other developments" has little to do with mootness, but suggests that the appellate court was of the view that except for the Shell project, the case is not ripe. Indeed, that is the only possible ground for affirming the lower court ruling as to the City of San Luis Obispo and the City of Morro Bay.

The classic decision of this Court on the subject of ripeness is *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed. 2d 681 (1967). *Abbott Laboratories* dealt with a situation in which the Food and Drug Administration wrote a letter to companies throughout that industry threatening criminal prosecution if the companies proceeded in a certain way. The Court held that was sufficient to establish a ripe controversy, based on the criteria established in that case of the fitness of the issues for judicial consideration and the hardship to the parties of avoiding judicial review. 387 U.S. at 148-49. WSPA believes that both of the criteria in *Abbott Laboratories* are plainly satisfied as to San Luis Obispo County and the cities of San Luis Obispo and Morro Bay within the County.

First, an issue of law—the validity of an ordinance—is presented. That alone goes a long way toward establishing ripeness. Second, there is genuine hardship. The ordinances require that companies who wish to install facilities after completing all of the normal complex and burdensome permit requirements must submit the permit finally obtained to a referendum and go forward only if they win. The determination of the final issuance of a permit on that basis is at best a dice game and at worst a certain loser. Particularly with Shell's experience in mind, every applicant will recognize that whatever luck he has working through the City or County Planning Department and the Board of Supervisors or City Council thereafter (a process which by itself takes years and requires millions in engineering costs), it is singularly unlikely that he will survive the final challenge in the electorate. At best, he knows that the result is highly uncertain. He also knows that the result will depend on the degree of local hostility to offshore development itself and not on the merits or demerits of the onshore portion of the project. What he will have before him is

in effect a referendum on the validity of Congress' policy for developing the OCS. That is what happened to Shell, this is doubtless what will happen the next time. If an applicant cannot challenge such an ordinance before he embarks on that course, he is unlikely ever to embark on it at all.[3]

This is thus a case directly on point with this Court's decision in *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 103 S.Ct. 1713, 75 L.Ed. 2d 752 (1983) ("PG&E"). In that case, this Court had before it two sections of the California Public Resources Code dealing with nuclear energy. The first section provided that before additional nuclear power plants were built, the State Energy Commission had to determine, on a case by case basis, whether there would be adequate capacity at the new plants for short-term storage of spent fuel rods. The second section declared a general moratorium on the certification of new plants until a finding had been made that an appropriate technology or means for the disposal of high-level nuclear waste had been developed. Both were challenged under federal policies providing for nuclear regulation and under federal statutes favoring nuclear development. This Court found that the controversy was ripe as to the prohibition (moratorium) against construction of nuclear power plants until a permanent repository was established. The Court specifically found that postponing review would "work substantial hardship" on the plaintiff utilities. That particular hardship is exactly what he have here. The Court stressed that:

> "As the Court of Appeals cogently reasoned, for the utilities to proceed in hopes that, when the time

---

[3] It is notable in that connection that Shell had nearly completed the permit process when the ordinance requiring the referendum was adopted.

> for certification came, either the required findings would be made or the law would be struck down, requires the expenditure of millions of dollars over a number of years, without any certainty of recovery if certification were denied. The construction of new nuclear facilities requires considerable advance planning—on the order of 12 to 14 years. Thus, as in the *Rail Reorganization Act Cases*, 419 U.S. 102, 144 (1974), 'decisions to be made now or in the short future may be affected' by whether we act. 'One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impeding that is enough.' *Id.* at 143, quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923). To require the industry to proceed without knowing whether the moratorium is valid would impose a palpable and considerable hardship on the utilities . . . ."
>
> 461 U.S. at 201-202.

Like the public utilities in the *PG&E* case, WSPA members must spend considerable time and expense—measured in terms of many years and millions of dollars —in developing leases to the point where permits for onshore facilities can be presented to the electorate for approval. This is an expense which is totally wasted if the election is lost. There has been only one election so far, and it was lost. This uncertainty is enough to render the issue ripe for review under the *Abbott Laboratories* and *PG&E* decisions.[4]

---

[4] The District of Columbia Court of Appeals has held that where a matter clearly satisfies the *Abbott Laboratories* "fitness" test, lack of hardship ". . . cannot tip the balance against judicial review," and the court consequently "need not consider" whether the claimant would suffer any hardship from postponing review. *Air Transport Ass'n of America v. Dept. of Transportation*, 900 F.2d 369, 374 (D.C. Cir. 1990); *Consolidated Rail Corp. v. United States*, 896 F.2d 574, 577 (D.C. Cir. 1990). The Court of Appeals decision

In contrast, the Court in *PG&E* found the short-term storage capacity determination issue to be unripe. The Court reasoned that "there is little likelihood that industry behavior would be uniquely affected by whatever uncertainty surrounds the interim storage provisions." 461 U.S. at 203. There was no reason to believe that permits for reasonable storage would be denied and none had been. To the contrary, total uncertainty—or a negative certainty—will continue to surround the San Luis Obispo leases. Moreover, the simple holding of the referendum, since it is almost inevitably a referendum over voter satisfaction with or hostility to federal policies for the development of the OCS, amounts to a practical transfer of jurisdiction over such development on the OCS from the United States to the local electorate. Such jurisdiction is plainly reserved to the United States. 43 U.S.C. § 1332.

CONCLUSION

WSPA submits that the ordinances challenged here are unconstitutional on their face. The ordinances are intended to prevent implementation of the federal policy for expeditious and orderly development of the OCS. They build a wall against a particular kind of interstate commerce. Because of the seriousness and national importance of this issue, we respectfully urge that this Court grant certiorari on the entire case as addressed by the district court. If, however, the Court should grant certiorari on the issues of ripeness and mootness only (the issues covered by the Court of Appeals), then we would respectfully ask this Court to consider whether this is not one of those rare cases in which it is appro-

---

here is in conflict with that view and thus this Court should grant review in order to resolve the conflict.

priate to grant certiorari and remand summarily with directions to consider the merits.

Respectfully submitted,

PHILIP K. VERLEGER
(Counsel of Record)
DONNA R. BLACK
BRADLEY R. HOGIN
BAKER & HOSTETLER,
McCUTCHEN BLACK
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Counsel for Petitioners
Western States Petroleum
Association and
National Ocean Industries
Association

Dated: November 21, 1990

90-805

No. 90-

FILED
NOV 21 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF SAN LUIS OBISPO and CITY OF SANTA CRUZ,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

PHILIP K. VERLEGER
(Counsel of Record)
DONNA R. BLACK
BRADLEY R. HOGIN
BAKER & HOSTETLER,
McCUTCHEN BLACK
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Counsel for Petitioners Western States Petroleum Association and National Ocean Industries Association

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

206

INDEX OF APPENDICES

APPENDIX A: Page

Opinion of the Court of Appeals (June 11, 1990).. 1a

APPENDIX B:

Order Amending and Amended Opinion of the Court of Appeals (August 23, 1990) 10a

APPENDIX C:

District Court Memorandum Order Granting in Part Motions to Dismiss and Denying Motion for Summary Judgment (April 21, 1988) 19a

APPENDIX D:

District Court Order Denying Motion for Reconsideration and Motion to File First Amended Complaint (September 6, 1990) 51a

APPENDIX E:

District Court Order for Entry of Judgment Pursuant to Rule 54(b) and Judgment (October 3, 1988) 55a

APPENDIX F:

Henderson Declaration in Support of Motion For Reconsideration (July 1, 1988) 60a

APPENDIX G:

Henderson Supplemental Declaration (January 4, 1988) 63a

APPENDIX H:

Henderson Declaration (November 23, 1987) 78a

APPENDIX I:

First Amended Complaint (November 3, 1987).... 90a

INDEX OF APPENDICES—Continued

APPENDIX J: Page

Ordinance of County of Sonoma 110a
Ordinance of County of San Mateo 121a
Ordinance of County of Monterey 149a
Ordinance of County of San Luis Obispo 155a
Ordinance of County of Santa Cruz 157a
Ordinance of City of San Francisco 164a
Ordinance of City of Monterey 168a
Ordinance of City of Morro Bay 174a
Ordinance of City of San Luis Obispo 179a
Ordinance of City of Santa Cruz 182a

APPENDIX K:

OCSLA §§ 1332, 1345 ..... 189a

APPENDIX L:

S.Ct. Rule 29.1 Statement 193a

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 88-6608

D.C. No. CV-87-5190-CBM

WESTERN OIL AND GAS ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Plaintiffs-Appellants,

v.

SONOMA COUNTY; SAN MATEO COUNTY; MONTEREY COUNTY; SAN LUIS OBISPO COUNTY; COUNTY OF SANTA CRUZ; CITY OF MONTEREY; CITY OF MORRO BAY; CITY OF SAN LUIS OBISPO; CITY OF SANTA CRUZ; CITY OF SAN FRANCISCO; COUNTY OF SAN FRANCISCO,
Defendants-Appellees,

STATE OF CALIFORNIA, acting by and through the California Coastal Commission and the California State Lands Commission; NATURAL RESOURCES DEFENSE COUNCIL; THE LEAGUE FOR COASTAL PROTECTION,
Defendants-Intervenors-Appellees.

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Argued Submission Deferred October 31, 1989
Pasadena, California
Resubmitted December 1, 1989

Filed June 11, 1990

Before: William A. Norris, Stephen Reinhardt and Stephen S. Trott, Circuit Judges.

Opinion by Judge Norris

COUNSEL

Philip K. Verleger, McCutchen, Black, Verleger & Shea, Los Angeles, California, for the plaintiffs-appellants.

Roger Beers, San Francisco, California; Stephen Butler, Sonoma County Counsel, Santa Rosa, California; Michael Murphy, San Mateo County District Attorney's Office, Redwood City, California; W. Allen Bidwell, Monterey County Counsel's Office, Salinas, California; Dwight Herr, Santa Cruz County Counsel's Office, Santa Cruz, California; Judy Skousen, J.D., Morro Bay City Attorney's Office, Morro Bay, California; Vickie Finucane, San Luis Obispo City Attorney's Office, San Luis Obispo, California; James Lindholm and Raymond Biering, San Luis Obispo County Counsel's Office, San Luis Obispo, California; Bill Conners, Monterey City Attorney's Office, Monterey, California; John Barisone, Santa Cruz City Attorney's Office; and John S. Roddy, Deputy City Attorney, San Francisco, California, for defendants-appellees.

John A. Saurenman, Mary Gray Holt, Deputy Attorneys General, Los Angeles, California; Johanna H. Wald, Natural Resources Defense Council, San Francisco, California, for the defendants-intervenors-appellees.

J. Carol Williams, Department of Justice, Land & Natural Resources Division, Washington, D.C.; Sarah F. Bates, Sierra Club Legal Defense Fund, San Francisco, California; Eric Twelker, Mountain States Legal Foundation, Denver, Colorado, for the amici curiae.

OPINION

NORRIS, Circuit Judge:

Two oil industry associations, the Western Oil and Gas Association (WOGA) and the National Ocean Industries Association (NOIA), challenge the constitutionality of certain land use ordinances passed by various coastal cities and counties in the State of California.[1] The local ordinances regulate the onshore facilities used to support off-shore and Outer Continental Shelf oil and gas development. Appellants contend that the ordinances violate the federal policy underlying the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1865 (Supp. V 1987), which declares the policy of the United States that the Outer Continental Shelf should be available for expeditious and orderly development subject to environmental safeguards. *See* 43 U.S.C. § 1802.

The district court dismissed appellants' claims under Federal Rule of Civil Procedure 12(b)(1) because the claims were not ripe and appellants had failed to exhaust their administrative remedies, and under Rule 12(b)(6) because appellants had failed to state a claim on the merits. In November 1989, after this appeal was filed but before it was submitted, President Bush signed into law a moratorium on certain off-shore oil drilling and pre-lease preparation activities. Department of Interior Appropriations Bill, Pub. L. No. 101-121, § 112. The bill effectively prohibits pre-lease activities off the California coast until 1991 and possibly 1992.

We first address the effect which the recent moratorium on leasing activities has upon this appeal. We then turn to a discrete issue involving only the County of San Luis Obispo.

---

[1] The ordinances of six counties and five cities are at issue. The counties are: Sonoma County, San Mateo County, Monterey County, County of Santa Cruz, County of San Francisco, and County of San Luis Obispo. The cities are: San Francisco, Santa Cruz, Monterey, Morro Bay, and San Luis Obispo.

I

Under the Outer Continental Shelf Lands Act, the Secretary of the Interior is empowered to lease tracts in federal waters offshore California for oil and gas exploration and development. 43 U.S.C. § 1802(1). Outer Continental Shelf (OCS) leases presently exist off the coast of only one of the counties involved in this case—San Luis Obispo. The federal government has not conducted an OCS lease sale for areas offshore California since the fall of 1984. Sale 119, which involves tracts offshore of Sonoma, Marin, San Mateo, and Santa Cruz counties, has been halted under the new DOI appropriations bill, and pre-lease activity has been suspended off the central coast. Prior to suspending Lease Sale 119, President Bush also stayed Sale 91, offshore Humboldt and Mendocino Counties, and Sale 95, offshore southern California from San Luis Obispo to the international boundary with Mexico. The future of the OCS leases of the California coast has been uncertain for much of the past decade, and that uncertainty pervades not only this litigation but the entire OCS leasing program. The district court so concluded when it held that the series of contingencies inherent in the leasing program at this time made appellants' claims too speculative for resolution by a federal court.[2]

---

[2] In deciding the ripeness issue, the district court distinguished between two types of ordinances: those which imposed a moratorium on onshore support facilities and those which merely added a requirement of local voter approval to existing procedures for issuing construction permits. The court held that claims in connection with the latter group of ordinances were not ripe. *Western Oil and Gas Ass'n v. Sonoma County et al.*, No. CV 87-5190, slip op. at 10-11 (C.R. Cal. April 21, 1988). Two of the moratorium ordinances were also deemed unripe. The court found that no harm from the two-year moratorium imposed by the San Francisco ordinance was possible because more than a two-year delay could be expected before the government began leasing tracts off the northern California coast. *Id.* at 11-12. In addition, the district court found that the San Mateo ordinance would not take effect until approved

The parties disagree about the effect and significance of the most recent moratorium. Appellants argue that the DOI Appropriations Bill has rendered this appeal moot in connection with all of the ordinances except those passed by San Luis Obispo County and two cities in that county, San Luis Obispo and Morro Bay. Because they argue that the appeal is moot, appellants ask that we dismiss the appeal and vacate the judgment of the district court. Appellees, on the other hand, contend that the case is not moot and that the bill presents yet another example of why this litigation has never been ripe for judicial resolution. Because the case is unripe, they argue, we should affirm the judgment of the district court.

The ripeness and mootness doctrines are based in part upon the Article III requirement that courts decide only cases or controversies. *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138 (1974). An action is unripe when the issues are not sufficiently concrete for judicial resolution. *See Pacific Legal Found. v. State Energy Resources Conservation & Dev. Comm'n*, 659 F.2d 903, 915 (9th Cir. 1981), *aff'd sub nom. Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190 (1983). An action is moot when " 'the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.' " *Northwest Environmental Defense Center v. Gordon*, 849 F.2d 1241, 1244 (9th Cir. 1988) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)). The ripeness inquiry asks "whether there yet is any need for the court to act," while the mootness inquiry asks "whether there is anything left for the court to do." Wright, Miller & Cooper, *Federal Practice and Procedure*, § 3532.1 (2d ed. 1984).

---

by the California Coastal Commission. *Id.* at 13. Hence the court held that appellants' claims were unripe with respect to 10 of the ordinances because the claims were advanced prior to any event which could cause the ordinances to be applied to any of appellants' members. *Id.* at 7-13.

Appellants argue that their appeal with regard to all the ordinances, except those adopted by the San Luis Obispo jurisdictions, is moot because the new DOI Appropriations Bill delays the necessary activities for the previously scheduled lease sales. Although they argue mootness, appellants acknowledge that the seeds of controversy between themselves and the local governments still remain. "If the decision is to go forward with the sales," say appellants, "then the controversy we have raised here may well arise again, but it is not here now." Appellants' Memorandum of Points and Authorities in Support of Motion to Vacate Judgment and to Dismiss Appeal as Moot at 4. Appellees agree that the ripeness questions, at least, are likely to arise again if the judgment of the district court is vacated. They argue that the law is clear that only a previously ripe argument can be moot and that no dispute can properly be declared moot when it is likely to recur in later litigation.

We agree with appellees that actions are not moot when the issues they concern are likely to recur. Our court has consistently held when a controversy is an ongoing one, the case has not become moot. In *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431 (9th Cir. 1987), we held that a case had not become moot because, despite growing accord between the parties, continuing controversy remained. Earlier, we held in *Seay v. McDonnell Douglas Corp.*, 533 F.2d 1126, 1130 (9th Cir. 1976) that a defendant's voluntary cessation of wrongdoing did not render the case moot because it provided no assurance that the alleged wrongdoing would not recur. Both these cases support the more general proposition that when the possibility of controversy remains, the case is not yet moot. The Third Circuit has explicitly held that "an appeal will not be deemed moot if there is a reasonable likelihood that the parties will contest the same issues in a subsequent proceeding." *Hooker Chem. Co. v. EPA*, 642 F.2d 48, 52 (3d Cir. 1981) (citing *Klein v. Califano*, 586 F.2d 250, 255-56 (3d Cir. 1978) (en banc)). We agree with the

position of the Third Circuit and hold that because appellants concede that contested issues could arise again, controversy still smoulders. The case, therefore, cannot be moot.

Having held that this action should not be dismissed as moot, we now consider whether appellants have presented a concrete case or controversy. In deciding whether an issue is ripe for review, the court "evaluate[s] both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967); *see also Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624, 627 (9th Cir. 1989), *petition for cert. filed*, No. 89-1375 (Feb. 27, 1990); *Western Oil & Gas Assoc. v. EPA*, 633 F.2d 803, 807 (9th Cir.). The court inquires whether the controversy generated is essentially legal in nature or whether further factual amplication is necessary. In addition, we assess potential hardship to the parties if review is denied. *See Winter v. Cal. Medical Review*, No. 88-6499, slip op. at 3742 (9th Cir. April 13, 1990); *Schiable*, 874 F.2d at 627; *Portland Police Ass'n v. City of Portland*, 658 F.2d 1272, 1273 (9th Cir. 1981).

Appellants have not satisfied the fitness requirement. The disagreement between the oil industry and the local governments is not clearly framed by the record before us. It remains to be seen whether any of the leases remaining off the California coast will ever be offered for sale. If the leases are never offered for sale, then the new ordinances will never come into play. Because of this factual gap, a strictly legal issue is not presented to us. *See Shell Oil Co. v. City of Santa Monica*, 830 F.2d 1052, 1062 (9th Cir. 1987). Thus, the entire case is far too speculative for resolution by a federal court. Further delineation of the facts is necessary to shape the issues for review.

Nor are we convinced that the hardship test has been met. To meet the hardship requirement, a litigant must

show that "withholding review would result in 'direct and immediate' hardship and would entail more than possible financial loss." *Winter*, No. 88-6499, slip op. at 3742 (quoting *State of Cal. Dep't of Educ. v. Bennett*, 833 F.2d 827, 833 (9th Cir. 1987); *see also Portland Police Ass'n*, 658 F.2d at 1273. The hardship claimed by appellants is that the mere existence of the ordinances somehow interferes with the right of oil companies to bid on Outer Continental Shelf leases. Appellants premise this argument on their contention that the ordinances are preventing the oil industry from engaging in Outer Continental Shelf leasing and development. We need not decide, at least at this time, how the ordinances affect what appellants call their "right to bid." The ordinances currently are not impeding the oil companies' ability or motivation to evaluate or bid on the leases. It is the congressional moratorium, not the ordinances, that is prohibiting such activity at this time. We see no hardship to appellants' bidding rights by denying review when no leases are being offered for bid.

II

Offshore of San Luis Obispo County, Shell Oil Company, a member of appellant WOGA, has obtained an OCS lease which it originally proposed to develop and service with onshore facilities in San Luis Obispo County. At one point, Shell applied for a permit under the San Luis Obispo ordinance which appears to have been denied by a popular vote. The election was nullified by the County, however, for reasons that the record does not make clear. The record suggests that Shell has abandoned the San Luis Obispo project, that no other development has been proposed, that a new vote was never held, and that the offshore San Luis Obispo lease is now being serviced from onshore facilities in Santa Barbara County. Although the record suggests that the controversy involving Shell's lease may be moot, we cannot be certain because the relevant facts are not adequitely developed in

the record before us. Accordingly, we remand the question of mootness with respect to Shell's lease offshore San Luis Obispo County.

III

The claims involving appellees Sonoma County, San Mateo County, Monterey County, County of Santa Cruz, City and County of San Francisco, City of Monterey, City of Morro Bay, City of San Luis Obispo, and City of Santa Cruz are unripe. Accordingly, we AFFIRM the judgment of the district court on the ground that these claims are unripe. We therefore do not reach the merits of appellants' claims. The questions involving San Luis Obispo County are REMANDED to the district court for further factual development and proceedings consistent with this opinion.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 88-6608

D.C. No. CV-87-5190-CBM

WESTERN OIL AND GAS ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Plaintiffs-Appellants,

v.

SONOMA COUNTY; SAN MATEO COUNTY; MONTEREY COUNTY; SAN LUIS OBISPO COUNTY; COUNTY OF SANTA CRUZ; CITY OF MONTEREY; CITY OF MORRO BAY; CITY OF SAN LUIS OBISPO; CITY OF SANTA CRUZ; CITY OF SAN FRANCISCO; COUNTY OF SAN FRANCISCO,
Defendants-Appellees,

STATE OF CALIFORNIA, acting by and through the California Coastal Commission and the California State Lands Commission; NATURAL RESOURCES DEFENSE COUNCIL; THE LEAGUE FOR COASTAL PROTECTION,
Defendants-Intervenors-Appellees.

ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Argued Submission Deferred October 31, 1989
Pasadena, California
Resubmitted December 1, 1989

Filed June 11, 1990
Amended August 23, 1990

Before: William A. Norris, Stephen Reinhardt and Stephen S. Trott, Circuit Judges.

Opinion by Judge Norris

COUNSEL

Philip K. Verleger, McCutchen, Black, Verleger & Shea, Los Angeles, California, for the plaintiffs-appellants.

Roger Beers, San Francisco, California; Stephen Butler, Sonoma County Counsel, Santa Rosa, California; Michael Murphy, San Mateo County District Attorney's Office, Redwood City, California; W. Allen Bidwell, Monterey County Counsel's Office, Salinas, California; Dwight Herr, Santa Cruz County Counsel's Office, Santa Cruz, California; Judy Skousen, J.D., Morro Bay City Attorney's Office, Morro Bay, California; Vickie Finucane, San Luis Obispo City Attorney's Office, San Luis Obispo, California; James Lindholm and Raymond Biering, San Luis Obispo County Counsel's Office, San Luis Obispo, California; Bill Conners, Monterey City Attorney's Office, Monterey, California; John Barisone, Santa Cruz City Attorney's Office; and John S. Roddy, Deputy City Attorney, San Francisco, California, for defendants-appellees.

John A. Saurenman, Mary Gray Holt, Deputy Attorneys General, Los Angeles, California; Johanna H. Wald, Natural Resources Defense Council, San Francisco, California, for the defendants-intervenors-appellees.

J. Carol Williams, Department of Justice, Land & Natural Resources Division, Washington, D.C.; Sarah F. Bates, Sierra Club Legal Defense Fund, San Fran-

cisco, California; Eric Twelker, Mountain States Legal Foundation, Denver, Colorado, for the amici curiae.

ORDER

The opinion of the court in this case, filed June 11, 1990, is hereby amended as follows: on page 6010 of the slip opinion, the following language is added at the end of the third sentence of Part III:

> ", and accordingly VACATE the district court's findings on the merits of these claims."

The petition for rehearing is DENIED.

OPINION

NORRIS, Circuit Judge:

Two oil industry associations, the Western Oil and Gas Association (WOGA) and the National Ocean Industries Association (NOIA), challenge the constitutionality of certain land use ordinances passed by various coastal cities and counties in the State of California.[1] The local ordinances regulate the onshore facilities used to support off-shore and Outer Continental Shelf oil and gas development. Appellants contend that the ordinances violate the federal policy underlying the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1865 (Supp. V 1987), which declares the policy of the United States that the Outer Continental Shelf should be available for expeditious and orderly development subject to environmental safeguards. *See* 43 U.S.C. § 1802.

---

[1] The ordinances of six counties and five cities are at issue. The counties are: Sonoma County, San Mateo County, Monterey County, County of Santa Cruz, County of San Francisco, and County of San Luis Obispo. The cities are: San Francisco, Santa Cruz, Monterey, Morro Bay, and San Luis Obispo.

The district court dismissed appellants' claims under Federal Rule of Civil Procedure 12(b)(1) because the claims were not ripe and appellants had failed to exhaust their administrative remedies, and under Rule 12(b)(6) because appellants had failed to state a claim on the merits. In November 1989, after this appeal was filed but before it was submitted, President Bush signed into law a moratorium on certain off-shore oil drilling and pre-lease preparation activities. Department of Interior Appropriations Bill, Pub. L. No. 101-121, § 112. The bill effectively prohibits pre-lease activities off the California coast until 1991 and possibly 1992.

We first address the effect which the recent moratorium on leasing activities has upon this appeal. We then turn to a discrete issue involving only the County of San Luis Obispo.

I

Under the Outer Continental Shelf Lands Act, the Secretary of the Interior is empowered to lease tracts in federal waters offshore California for oil and gas exploration and development. 43 U.S.C. § 1802(1). Outer Continental Shelf (OCS) leases presently exist off the coast of only one of the counties involved in this case—San Luis Obispo. The federal government has not conducted an OCS lease sale for areas offshore California since the fall of 1984. Sale 119, which involves tracts offshore of Sonoma, Marin, San Mateo, and Santa Cruz counties, has been halted under the new DOI appropriations bill, and pre-lease activity has been suspended off the central coast. Prior to suspending Lease Sale 119, President Bush also stayed Sale 91, offshore Humboldt and Mendocino Counties, and Sale 95, offshore southern California from San Luis Obispo to the international boundary with Mexico. The future of the OCS leases off the California coast has been uncertain for much of the past decade, and that uncertainty pervades not only this litigation but the entire OCS leasing program. The district court so con-

cluded when it held that the series of contingencies inherent in the leasing program at this time made appellants' claims too speculative for resolution by a federal court.[2]

The parties disagree about the effect and significance of the most recent moratorium. Appellants argue that the DOI Appropriations Bill has rendered this appeal moot in connection with all of the ordinances except those passed by San Luis Obispo County and two cities in that county, San Luis Obispo and Morro Bay. Because they argue that the appeal is moot, appellants ask that we dismiss the appeal and vacate the judgment of the district court. Appellees, on the other hand, contend that the case is not moot and that the bill presents yet another example of why this litigation has never been ripe for judicial resolution. Because the case is unripe, they argue, we should affirm the judgment of the district court.

The ripeness and mootness doctrines are based in part upon the Article III requirement that courts decide only cases or controversies. *Regional Rail Reorganization Act*

---

[2] In deciding the ripeness issue, the district court distinguished between two types of ordinances: those which imposed a moratorium on onshore support facilities and those which merely added a requirement of local voter approval to existing procedures for issuing construction permits. The court held that claims in connection with the latter group of ordinances were not ripe. *Western Oil and Gas Ass'n v. Sonoma County et al.*, No. CV 87-5190, slip op. at 10-11 (C.R. Cal. April 21, 1988). Two of the moratorium ordinances were also deemed unripe. The court found that no harm from the two-year moratorium imposed by the San Francisco ordinance was possible because more than a two-year delay could be expected before the government began leasing tracts off the northern California coast. *Id.* at 11-12. In addition, the district court found that the San Mateo ordinance would not take effect until approved by the California Coastal Commission. *Id.* at 13. Hence the court held that appellants' claims were unripe with respect to 10 of the ordinances because the claims were advanced prior to any event which could cause the ordinances to be applied to any of appellants' members. *Id.* at 7-13.

Cases, 419 U.S. 102, 138 (1974). An action is unripe when the issues are not sufficiently concrete for judicial resolution. *See Pacific Legal Found. v. State Energy Resources Conservation & Dev. Comm'n*, 659 F.2d 903, 915 (9th Cir. 1981), *aff'd sub nom. Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190 (1983). An action is moot when " 'the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.' " *Northwest Environmental Defense Center v. Gordon*, 849 F.2d 1241, 1244 (9th Cir. 1988) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)). The ripeness inquiry asks "whether there yet is any need for the court to act," while the mootness inquiry asks "whether there is anything left for the court to do." Wright, Miller & Cooper, *Federal Practice and Procedure*, § 3532.1 (2d ed. 1984).

Appellants argue that their appeal with regard to all the ordinances, except those adopted by the San Luis Obispo jurisdictions, is moot because the new DOI Appropriations Bill delays the necessary activities for the previously scheduled lease sales. Although they argue mootness, appellants acknowledge that the needs of controversy between themselves and the local governments still remain. "If the decision is to go forward with the sales," say appellants, "then the controversy we have raised here may well arise again, but it is not here now." Appellants' Memorandum of Points and Authorities in Support of Motion to Vacate Judgment and to Dismiss Appeal as Moot at 4. Appellees agree that the ripeness questions, at least, are likely to arise again if the judgment of the district court is vacated. They argue that the law is clear that only a previously ripe argument can be moot and that no dispute can properly be declared moot when it is likely to recur in later litigation.

We agree with appellees that actions are not moot when the issues they concern are likely to recur. Our court has consistently held that when a controversy is an on-going

one, the case has not become moot. In *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431 (9th Cir. 1987), we held that a case had not become moot because, despite growing accord between the parties, continuing controversy remained. Earlier, we held in *Seay v. McDonnell Douglas Corp.*, 533 F.2d 1126, 1130 (9th Cir. 1976) that a defendant's voluntary cessation of wrongdoing did not render the case moot because it provided no assurance that the alleged wrongdoing would not recur. Both these cases support the more general proposition that when the possibility of controversy remains, the case is not yet moot. The Third Circuit has explicitly held that "an appeal will not be deemed moot if there is a reasonable likelihood that the parties will contest the same issues in a subsequent proceeding." *Hooker Chem. Co. v. EPA*, 642 F.2d 48, 52 (3d Cir. 1981) (citing *Klein v. Califano*, 586 F.2d 250, 255-56 (3d Cir. 1978) (en banc)). We agree with the position of the Third Circuit and hold that because appellants concede that contested issues could arise again, controversy still smoulders. The case, therefore, cannot be moot.

Having held that this action should not be dismissed as moot, we now consider whether appellants have presented a concrete case or controversy. In deciding whether an issue is ripe for review, the court "evaluate[s] both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967); *see also Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624, 627 (9th Cir. 1989), *petition for cert. filed*, No. 89-1375 (Feb. 27, 1990); *Western Oil & Gas Assoc. v. EPA*, 633 F.2d 803, 807 (9th Cir.). The court inquires whether the controversy generated is essentially legal in nature or whether further factual amplication is necessary. In addition, we assess potential hardship to the parties if review is denied. *See Winter v. Cal. Medical Review*, No. 88-6499, slip op. at 3742 (9th Cir. April 13,

1990); *Schiable*, 874 F.2d at 627; *Portland Police Ass'n v. City of Portland*, 658 F.2d 1272, 1273 (9th Cir. 1981).

Appellants have not satisfied the fitness requirement. The disagreement between the oil industry and the local governments is not clearly framed by the record before us. It remains to be seen whether any of the leases remaining off the California coast will ever be offered for sale. If the leases are never offered for sale, then the new ordinances will never come into play. Because of this factual gap, a strictly legal issue is not presented to us. *See Shell Oil Co. v. City of Santa Monica*, 830 F.2d 1052, 1062 (9th Cir. 1987). Thus, the entire case is far too speculative for resolution by a federal court. Further delineation of the facts is necessary to shape the issues for review.

Nor are we convinced that the hardship test has been met. To meet the hardship requirement, a litigant must show that "withholding review would result in 'direct and immediate' hardship and would entail more than possible financial loss." *Winter*, No. 88-6499, slip op. at 3742 (quoting *State of Cal. Dep't of Educ. v. Bennett*, 833 F.2d 827, 833 (9th Cir. 1987); *see also Portland Police Ass'n*, 658 F.2d at 1273. The hardship claimed by appellants is that the mere existence of the ordinances somehow interferes with the right of oil companies to bid on Outer Continental Shelf leases. Appellants premise this argument on their contention that the ordinances are preventing the oil industry from engaging in Outer Continental Shelf leasing and development. We need not decide, at least at this time, how the ordinances affect what appellants call their "right to bid." The ordinances currently are not impeding the oil companies' ability or motivation to evaluate or bid on the leases. It is the congressional moratorium, not the ordinances, that is prohibiting such activity at this time. We see no hardship to appellants' bidding rights by denying review when no leases are being offered for bid.

II

Offshore of San Luis Obispo County, Shell Oil Company, a member of appellant WOGA, has obtained an OCS lease which it originally proposed to develop and service with onshore facilities in San Luis Obispo County. At one point, Shell applied for a permit under the San Luis Obispo ordinance which appears to have been denied by a popular vote. The election was nullified by the County, however, for reasons that the record does not make clear. The record suggests that Shell has abandoned the San Luis Obispo project, that no other development has been proposed, that a new vote was never held, and that the offshore San Luis Obispo lease is now being serviced from onshore facilities in Santa Barbara County. Although the record suggests that the controversy involving Shell's lease may be moot, we cannot be certain because the relevant facts are not adequately developed in the record before us. Accordingly, we remand the question of mootness with respect to Shell's lease offshore San Luis Obispo County.

III

The claims involving appellees Sonoma County, San Mateo County, Monterey County, County of Santa Cruz, City and County of San Francisco, City of Monterey, City of Morro Bay, City of San Luis Obispo, and City of Santa Cruz are unripe. Accordingly, we AFFIRM the judgment of the district court on the ground that these claims are unripe. We therefore do not reach the merits of appellants' claims, and accordingly VACATE the district court's findings on the merits of these claims. The questions involving San Luis Obispo County are REMANDED to the district court for further factual development and proceedings consistent with this opinion.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 87-5190 (CBM)

WESTERN OIL AND GAS ASSOCIATION, a nonprofit corporation, and NATIONAL OCEAN INDUSTRIES ASSOCIATION, a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY, MONTEREY COUNTY, SAN LUIS OBISPO COUNTY OF SANTA CRUZ, CITY AND COUNTY OF SAN FRANCISCO, CITY OF MONTEREY, CITY OF MORRO BAY, CITY OF OCEANSIDE, CITY OF SAN DIEGO, CITY OF SAN LUIS COISPO, and THE CITY OF SANTA CRUZ,
Defendants.

STATE OF CALIFORNIA, acting by and through the CALIFORNIA COASTAL COMMISSION and the CALIFORNIA STATE LANDS COMMISSION; NATURAL RESOURCES DEFENSE COUNCIL; and THE LEAGUE FOR COASTAL PROTECTION,
Defendant-Intervenors.

MEMORANDUM ORDER GRANTING IN PART MOTIONS TO DISMISS AND DENYING MOTION FOR SUMMARY JUDGMENT

[Filed Apr. 21, 1988]

This matter is before the Court on six motions. Five of the motions are motions to dismiss. The sixth is a

motion for partial summary judgment brought by plaintiffs.

A hearing was held on February 8, 1988, the Honorable Consuelo B. Marshall, United States District Judge, presiding. The Court, having reviewed the pleadings, moving papers, oppositions, replies, all exhibits presented by the parites, all pertinent authority and having heard the arguments of counsel, hereby issues the following memorandum order.

MOTIONS TO DISMISS

Five motions to dismiss are currently pending before the Court. These motions are brought by the following parties, defendant and intervenors, respectively: (1) the State of California (intervenor); (2) named defendant coastal counties and cities, other than the City and County of San Francisco, and the County of San Diego; (3) private, non-profit organization intervenors, Natural Resources Defense Council and The League for Coastal Protection; (4) the City and County of San Francisco; (5) the County of San Diego. The City and County of San Francisco has joined in the motion brought as a group by the other named defendants.

All motions to dismiss have been brought pursuant to both 12(b)(1) (subject matter jurisdiction) and 12(b)(6) (failure to state any claim upon which relief can be granted).

BACKGROUND

The complaint in this action was originally filed with the Court on August 7, 1987, seeking injunctive and declaratory relief as to thirteen ordinances passed by the various local governments named as defendants in the action. The original complaint attached as exhibits copies of the various ordinances at issue in the action.

On October 19, the State of California filed a motion to intervene in the action. On November 2, the two above-

named environmental protection groups moved for intervention. On December 30, the Court signed an order allowing both the state and the private environmental groups to intervene.

On November 3, 1987, plaintiffs filed a first amended complaint. The primary difference between the original and the first amended complaint is found at paragraph 17 of the first amended complaint, where plaintiffs make some specific allegations concerning an existing off-shore lease site off of San Luis Obispo owned by certain unnamed members of plaintiff organizations, as well as future/potential bids by member companies of plaintiff trade organizations for other off-shore lease sites.

Named as defendants in the first amended complaint are seven California counties and seven California cities. In common among the cities and counties named as defendants is the fact that all include within their territory land which lies along California's coastline, and all passed local ordinances regulating the on-shore support facilities for off-shore support facilities for off-shore (including outer continental shelf) oil and gas development (e.g., tanker terminals, pipelines, storage tanks, offices, warehouses, processing plants and helicopter pads). The ordinances were all passed in 1986 and either absolutely restrict development of on-shore facilities to service off-shore oil and gas development, or make construction of such facilities dependent on approval by the voters of that particular jurisdiction (except that San Diego County contends that its ordinance primarily just shifts the decision-making power re permits to the Board of Supervisors).

Plaintiffs in this case are two non-profit trade associations comprised of member companies involved in the oil and gas industry in California. Plaintiff Western Oil and Gas Association ("WOGA") represents members who are primarily invoved in the on-shore production, refining and marketing of petroleum and petroleum products. Plaintiff National Ocean Industries Association

("NOIA") is comprised primarily of member companies that do the resource exploration and development on the Outer Continental Shelf, and on-shore support work for those ventures.

Plaintiffs seek in the first amended complaint declaratory and injunctive relief. The primary focus of the controversy at the center of the first amended complaint is plaintiffs' argument that the ordinances in question violate the policy underlying the Outer Continental Shelf Lands Act ("OSCLA"), enacted by Congress, which declares it to be the policy of the United States that, *inter alia.*, the Outer Continental Shelf should be made available for expeditious and orderly development, subject to environmental safeguards. The first amended complaint alleges the following ten causes of action, including claims arising under the Supremacy Clause, the Due Process Clause of the Fourteenth Amendment, the Commerce Clause and the Equal Protection Clause.

Under Rule 12(b)(1) the defendants have moved to dismiss the entire first amended complaint for lack of subject matter jurisdiction. Under Rule 12(b)(1) the defendants contend that the first amended complaint fails to present a case or controversy cognizable under Article III of the U.S. Constitution. They argue that the allegations demonstrate a lack of the requirements of standing, ripeness exhaustion of administrative remedies necessary to demonstrate that a case or controversy exists.

The defendants have also challenged the ordinances under Rule 12(b)(6) for failure to state a claim. The motion filed by the State focuses on the preemption issues (those alleged as violations of the Supremacy Clause), and argues that the OCSLA and the Coastal Zone Management Act ("CZMA") are not intended to preempt the type of state action involved in these ordinances. The Local Government defendants argue that the plaintiffs are attempting to divest citizens of the right to vote in challenging those of the ordinances requiring voter approval, by referendum, of permits issued

for on-shore support facilities to off-shore drilling operations. The local governments also contend in their motion that the federal statutes named in the complaint do not pre-empt the local ordinances; that the commerce clause argument is misplaced because the ordinances do not (1) discriminate or evoke disparate treatment between intrastate and interstate because the ordinances treat equally facilities supporting any off-shore oil drilling operations, whether the drilling occurs in the state's territorial waters (intra-state) or in the federal waters of the outer continental shelf (interstate); and (2) any effects on the oil companies is incidental because the stated purpose of the ordinances is to protect the health and public safety.

Plaintiffs contend that the defendants apply the wrong standards for determination of whether the action is ripe because the complaint essentially states a "facial" unconstitutionality in the ordinances, and therefore can be challenged in the courts to its final application; that it is not necessary to go through an unconstitutional procedure in order to challenge that procedure when the ordinance is facially unconstitutional; that the administrative review procedures provided for in the California Public Resources Code, § 30000 et seq., are inadequate to address the issues raised in the first amended complaint in that (1) review of the ordinances by the California Coastal Commission is not a "remedy" available to plaintiffs because plaintiffs have no way to ensure the provisions of the act are enforced by the local governments prior to enforcement of the ordinances; (2) not all local government defendants even agree with the State of California that their ordinances need to be submitted the the California Coastal Commission for approval; and (3) the Coastal Commission's jurisdiction under the California Public Resources Act (§ 30103) extends inland no more than five miles. Plaintiffs argue that the ordinances generally ban or regulate the development of on-shore support facilities throughout the

entire city or county jurisdiction in which the ordinance was enacted. Therefore, the Coastal Commission cannot exercise jurisdiction over the ordinances to the extent that they effect land within the city or county but farther inland than the five-mile coastal zone.

In response to the argument by defendants that the plaintiffs lack standing because there has been no injury alleged to members, plaintiffs cite to those portions of the first amended complaint describing (1) the member companies who allegedly presently own outer continental shelf leases in the Santa Maria Basin off San Luis Obispo County, and allegations that those members have spent money for purchase, exploration and deveolpment (presumably, off-shore). Cited as an expense is an off-shore platform costing $160 million, now in storage. The other type of injury alleged by plaintiffs is injury to the *right to bid* on outer continental shelf leases, concerning lease sales now scheduled for 1989 and 1990 by the Department of the Interior. However, although plaintiffs have alleged that the members "are faced with the alternative of not bidding" due to costs, they do not actually allege that any members will be or even might be actually prevented from exercising their right to bid, nor do they allege that the ordinances would make their bids worthless or unusable. Rather, the allegations of ¶ 17(c) of the first amended complaint focus on the costs of delay as an injury.

DISCUSSION

Ripeness

Like the doctrine of standing, the doctrine of ripeness is based in part upon the Article III requirement that courts decide only cases or controversies. *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138, 95 S.Ct. 335, 355, 42 L.Ed.2d 320 (1974). The purpose of both the doctrine of standing and ripeness is to "prevent courts from becoming enmeshed in abstract questions

which have not concretely affected the parties." *Pence v. Andrus*, 586 F.2d 733, 737 (9th Cir. 1978). However, ripeness, unlike standing, also allows courts to decline to decide issues which are not yet fit for adjudication. *Pacific Legal Foundation v. State Energy Resources Conservation and Development Commission*, 659 F.2d 903, 915 (9th Cir. 1981), *affirmed, Pacific Gas & Electric Co., et al. v. State Energy Resources Conservation and Development Commission, et al.*, 461 U.S. 190 (1983). Ripeness requires the court to inquire " 'Whether the harm asserted has matured sufficiently to warrant judicial intervention.' " *Id.*, quoting, *Warth v. Seldin*, 422 U.S. 490, 499 n. 10, 95 S.Ct. 2197, 2205 n. 10, 45 L.Ed.2d 343 (1975).

The United States Supreme Court articulated a two-part standard for determination as to whether an *issue* is *ripe* for review in the case *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681 (1967). The Supreme Court in *Abbott* held that courts should "evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding the court consideration." *Id.*

Under the *Abbott* analysis, a challenge to a statute or regulation can be ripe even if the statute or ordinance has not yet been applied, so long as the issue raised is a purely legal one. *Pacific Legal Foundation, supra*, 659 F.2d at 915. "On the other hand, if the issue would be illuminated by the development of a better factual record, the challenged statute or regulation is generally not considered fit for adjudication until it has actually been applied." *Id.*

Both moving defendants/intervenors and plaintiffs have focused much discussion on the case of *Lake Nacimiento Ranch v. San Luis Obispo County*, 830 F.2d 977 (9th Cir. 1987).

The *Lake Nacimiento* case dealt with a complaint alleging a cause of action for unconstitutional *taking* under

the Fifth and Fourteenth Amendments. The Ninth Circuit in *Lake Nacimeinto* based its analysis, inter alia, on *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980), and *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 295-96, 101 S.Ct. 2352, 2370, 69 L.Ed. 1 (1981), which also both address complaints alleging unconstitutional *taking*.

Because this case does not deal with an unconstitutional taking of land, the Court looks to the fundamental rules regarding ripeness addressed in the *Abbott* case and its progeny. This does not mean, however, that the Court must find, as plaintiffs argue, that the case is not one involving land use. Although plaintiffs contend that the primary purpose of the 13 local ordinances at issue is to frustrate the federal policy articulated in the OCSLA, the ordinances themselves indeed affect land use within the jurisdiction of the local governments. This analysis merely means that the two-factor test applies to all ripeness issues, including those concerning land uses ordinances, where the issue for ripeness determination is not whether an unconstitutional taking has occurred. Although the *Abbott* standard was originally applied to judicial review of agency actions, courts have held that "it is equally applicable to the present context, where a statute is challenged as unconstitutional." *Pacific Legal Foundation*, 659 F.2d at 915 n. 19.

As addressed by the language in *Abbott*, the focus is whether each issue is ripe for determination. Therefore, the Court must address ripeness on an issue by issue basis.

In *Pacific Gas & Electric v. Energy Resources Commission*, 461 U.S. 190 (1983) (cited above, *affirming Pacific Legal Foundation*), the Supreme Court applied the *Abbott* test for ripeness to certain sections of the California Public Resources Code which dealt with nuclear power plant waste facilities. The issue before the Supreme Court was whether two particular provisions in the 1976 amendments to California's Warren-Alquist Act, Cal. Pub. Res.

Code Ann. §§ 25524.1(b) and 25524.2, making construction of nuclear power plants conditional in one case, and placing a moratorium in the other case, were preempted by the federal Atomic energy Act. *Pacific Gas and Electric v. Energy Resources Commission*, 461 U.S. at 194-95. Thus, the complaint before the Supreme Court had, as here, alleged preemption under the Supremacy Clause, Article VI, clause 2 of the U.S. Constittuion. In order for the Supreme Court to address the issue of preemption, it was first faced with determining whether the issue of preemption was ripe as to each section of the California statute.

In the *PG & E* case, one section of the California statute provided that before additional nuclear plants can be built, the California Energy Commission must determine on a case-by-case basis that there would be adequate capacity for interim storage of spent nuclear fuel. *Id.* at 197. The Supreme Court agreed with the Ninth Circuit that this section of the act was not ripe for judicial review, "because we cannot know whether the Energy Commission will ever find a nuclear plant's storage capacity to be inadequate," and therefore "judicial consideration of this provision should await further developments." *Id.* at 199, 203. Essentially, this analysis focuses primarily on the first factor of the *Abbott* test, fitness for judicial decision, and determines that where it is unclear that a permit to build would ever be denied in fact, the record is not yet complete and the matter is therefore not yet fit for judicial review. The Supreme Court did not reach the second factor of the test, hardship to the parties.

On the other hand, the Supreme Court, again agreeing with the Ninth Circuit, found that a second provision was ripe for review by the courts. That provision placed an open-ended moratorium of the certification of new nuclear plants until the Energy Commission made certain findings re waste disposal. In holding that a moratorium

was ripe for review, the Supreme Court focused on the second of the two factors, hardship to the parties. The Court explained that the issue of pre-emption was predominantly legal; that the postponement of a decision would likely work substantial hardship on the plaintiff utilities because construction of the nuclear facility requires considerable advance planning; and that to require the plaintiffs to proceed without knowing whether the moratorium is valid would impose a palpable and considerable hardship. *Id.* at 201-02.

The Ninth Circuit, in *Pacific Legal Foundation*, discussed the rationale behind the distinction in more depth. Unlike the first statute, the statute imposing a moratorium presents a present barrier to the development of nuclear power. Moreover, because the issue before the court as to the moratorium is purely legal, the court's ability to deal with the issue would not be enhanced by delay of review. *Pacific Legal Foundation*, 659 F.2d at 918.

The two types of statutes at issue in the *PG & E* and *Pacific Legal Foundation* cases are analogous to the different types of local ordinances at issue in the instant case. The first amended complaint, at pages 5 to 6, describes three general types of local ordinances at issue; (1) plaintiffs allege the ordinances passed by San Mateo (Complaint, Exh. B) and San Diego Counties (Exh. E), the City of San Diego (Exh. K) and City of Oceanside (Exh. J) absolutely restrict or prohibit development of such on-shore support facilities; (2) The ordinance of the City and County of San Francisco (Exh. G) imposes a two-year moratorium on such facilities to allow a study period; (3) The other require local voter approval before permits are issued.

Based on the way the various ordinances are characterized in the complaint, those requiring voter approval of permits would be analagous to the statute in the

P. G. & E. case which required issuance of permits upon review on a case-by-case basis. In both instances, the challenges to the statute or ordinance was federal preemotion, but the courts cannot determine whether, here, the voters will ever, in fact, deny a permit.

Based on the face of the first amended complaint, those ordinances involving moratoriums would be analogous to the moratorium in the *P. G. & E.* case. The ordinances are complete upon passage in that they do not require further permit process. Although the State as intervenor argues that the ordinances are not enforceable under California law until approved by the state Coastal Commission, under the *Abbott* test, the issue of whether such a moratorium is preempted is a purely legal issue (unlike whether a particular permit would ever be denied by voters) and therefore it is fit for judicial decision. Review by the California Coastal Commission would not enhance the record before the Court.

The only moratorium ordinance readily distinguishable from that in the P. G. & E. case is that of the City and County of San Francisco. The San Francisco ordinance is for two years only, and on its face will expire in November 1988. Harm to plaintiffs directly caused by this ordinance is essentially an impossibility. No off-shore tracts off San Francisco are currently owned by any members of plaintiff organizations. Moreover, the federal government is not scheduled to begin leasing any new tracts until 1989 and 1990. Therefore, members of plaintiffs cannot even bid until one year after they are certain that the ordinance in question will expire. Because the instant ordinance is temporary and plaintiffs can point to no currently owned property upon which expenditures would be made, the San Francisco two year moratorium ordinance is distinguishable from that in the *P. G. & E.* case in which the moratorium was in definite. Because of the above factors, the San Francisco ordinance does not appear to meet the second factor of

the *Abbott* test, in that any *hardship* purportedly caused by this particular ordinance is negligible.

In addition, the San Mateo ordinance is one which must be examined more closely under the two-pronged *Abbott* ripeness test. The San Mateo ordinance (Complaint, Exh. B, p. 31) states that on-shore facilities for off-shore oil or gas are prohibited from locating in the coastal zone.. (San Mateo ordinance at 4.25). The "coastal zone" is a term describing the geographical area running 5 miles inland from the coast which is covered by the California Public Resources Code, section 30000 et seq. That provision is specified to be a location criteria. It is an absolute moratorium, but only within that limited geographical area. There is another provision that prohibits pipelines (section 4.28). It is less clear whether this restriction on the pipelines is limited to the coastal zone.

The significance of the geographical limitation in the San Mateo ordinance is that as an amendment to the existing Local Coastal Plan (LCP) must be reviewed by the California Coastal Commission before it becomes effective. Plaintiffs have generally argued with regard to all the ordinances that the Coastal Commission's jurisdiction is only within five miles of the coast and the ordinances cover the entire city or county. Therefore, the administrative review procedures before the Commission do not effect the finality of the Act for those areas located outside the five-mile zone. However, with specific reference to the San Mateo ordinance, it appears that the moratorium on building support facilities (and maybe on pipelines) falls entirely within the geographical jurisdiction of the California Coastal Commission. Therefore, under the California Public Resources Code, § 30514, which states that no amendment shall become effective until it has first submitted to and approved by the Calif. Coastal Commission, there arises a question as to whether the ordinance has met the finality requirement addressed by the Supreme Court in *Abbott*.

In *Abbott*, the Supreme Court dealt with the finality of administrative agency decisions within the meaning of section 10 of the Administrative Procedure Act, 5, U.S.C. section 704. 387 U.S. at 149. The Court, while taking a "flexible" view of finality, explained that inquiry into the finality of agency rules and regulations turned on whether "'[t]he process of rulemaking was complete.'" *Id.* at 151. Inquiry went to whether the rule was tentative or final (*Id.*); whether the agency had any authority to enforce the provision prior to review (*Id.* at 152); and whether the regulations have the status of law and carry sanctions. (*Id.*).

With regard to the San Mateo ordinance, under the California statute, as interpreted by the Attorney General of California, the ordinance effects an amendment to San Mateo's existing LCP and therefore is not effective or enforceable until approved by the Coastal Commission. For that reason, under the *Abbott* analysis, the San Mateo ordinance is not ripe for review at this stage.

Based on the foregoing, the only ordinances which are ripe for review by the court at this stage are those of San Diego County, the City of San Diego and the City of Oceanside which, on their face, place absolute moratoriums of indefinite duration on support facilities both within and without the 5 mile coastal zone covered by the California Coastal Commission.

Standing

Like ripeness, standing is a constitutional doctrine which derives from the requirement under Article III that federal courts decide only actual cases or controversies. *Pacific Legal Foundation*, 659 F.2d at 910. Standing limits the courts' jurisdiction to cases in which the plaintiff alleges having suffered particularized injury. *Id.* The doctrine also requires that plaintiff demonstrate a causal connection between the injury alleged and the conduct challenged. *Id.* Finally, there must be a

substantial likelihood that the relief sought will redress the claimed injury. *Id.* at 911. There are, then, essentially three elements, (1) particularized injury (to themselves); (2) causation; and (3) the court's capacity to redress the injuries alleged. *Id.*

The plaintiffs herein are trade organizations; the injury alleged is not to themselves but to their members. The Supreme Court has held that trade associations have standing to sue under the first element of standing if a three-pronged test is met:

(1) either the association or its members must have suffered some direct, cognizable injury;

(2) the interest at issue must be germane to the association's purpose;

(3) the relief sought must not require the participation of the individual members in the suit. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977).

The second and third prongs are satisfied in this case. The purpose of the trade associations representing the oil and gas interests and support companies is precisely to protect their members interests in furthering the exploration and development of oil resources, which is alleged to be the precise federal policy at issue in the instant lawsuits. Moreover, because the relief sought is injunctive and declaratory, based on constitutional issues, the individual members need not participate in the lawsuit in order for prosecution of the case to continue to fruition.

More difficult is the question of whether either the association or its members have suffered some cognizable injury. The plaintiffs do not allege injury to themselves, only to their members.

Addressing the only ordinances determined to be "ripe" for review, those of the City of San Diego, the County of San Diego and the City of Oceanside, the Court must

determine whether there is any direct, cognizable injury alleged. The plaintiff has admitted that the only lease purchased thus far is off of San Luis Obispo, far to the north. However, because these moratoriums are to continue indefinitely, and because this test of direct injury does not appear to negate future injuy if certain and cognizable, the Court looks to potential continuing injury. The federal government is scheduled to sell more outer continental shelf leases in 1989 and 1990. Plaintiffs allege in the complaint that moratoriums on needed support facilities will, at minimum, cause them to incur greater costs in the ultimate development of the off-shore lease holds, and that the uncertainty as to future building of facilities could cost them in delay. This injury to members is sufficient to satisfy both the first prong of the *Hunt* test, giving plaintiffs standing to sue on behalf of their members' interests.

Moreover, there is a traceable causal connection between the injury to the oil producers and the ordinances. Finally, the Court has the capacity to issue the injunctive and declaratory relief sought; if the Court were to find that the ordinances were either pre-empted by federal statute or violaitve of the due process, equal protection or commerce clauses, the Court could issue an injunction against enforcement of the ordinances, thereby redressing the prospective injuries to plaintiffs' members. Based on this analysis, it appears that the plaintiffs have standing to sue on behalf of their members.

Exhaustion of Remedies

The State of California has argued that plaintiffs have failed to exhaust their administrative remedies under the California Public Resources Act, discussed above. The act provides remedies to those whose permits have been denied. To the extent that the ordinances cover the coastal zone, there are administrative procedures available whereby plaintiffs' members can appeal denial of

permits to the Coastal Commission and can apply for amendment of the Local Coastal Plan to the extent that it precludes development of a certain type of energy facility, as is the case here.

In *Aleknagik Natives, Ltd. v. Andrus*, 648 F.2d 496 (9th Cir. 1980), the Ninth Circuit articulated the rules regarding exhaustion of administrative remedies in a case seeking injunctive relief. In *Aleknagik*, the Circuit explained that the "basic purpose of the doctrine of exhaustion of administrative remedies is to allow an administrative agency to perform functions within its special competence—to make a factual record, to apply its expertise and to correct its own errors so as to moot judicial controversies. *Id.* at 499. However, the Circuit went on to explain that the doctrine is within the discretion of the court, and that the court must examine each case by looking at the underlying purposes of the particular administrative scheme at issue. *Id.* at 499, 500.

The Circuit articulated the following exceptions to application of the doctrine: where "administrative remedies are inadequate or not efficacious"; "where pursuit of administrative remedies would be a futile gesture"; "where irreparable injury will result unless immediate judicial review is permitted"; or "where the administrative proceedings would be void." *Id.* at 499 (citations omitted).

Plaintiffs have argued that exhaustion of administrative remedies in this case would be inadequate because the alleged injury is discrimination against off-shore oil support operations, and irreparable injury will result.

With regard to the remaining three ordinances in San Diego and Oceanside, there are no allegations sufficient to indicate that irreparable injury would occur to plaintiffs; there is only plaintiffs' argument that additional amounts might be expended in exploration and preparation for bids in 1989 and 1990 while awaiting the decision by local governments and, if denied at the local level, the state

Coastal Commission for amendment to the LPC to allow the desired facilities. Moreover, despite a contention that the Commission would weigh its decision in favor of defendants, plaintiffs have provided no basis for a finding by the Court that pursuit of administrative remedies would be futile at the state Commission level. The purpose behind the statute allowing resort to the Coastal Commission level. The purpose behind the statute allowing resort to the Coastal Commission for amendment to the LCP to allow development of a particular type of energy facility is to address precisely the type of issue raised by plaintiffs. Plaintiffs argue that the statute addresses only major energy facilities, and not helicopter pads and office buildings. The Court finds this argument to be de minimis.

MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

The ordinances at issue in this action were attached to the original complaint but not to the first amended complaint. The original complaint notes that attachment at ¶ 11, but does not state that they are incorporated in the complaint by reference. The first amended complaint, at ¶ 11, simply notes that the ordinances have been lodged with the Court and were attached to the original complaint. The Court has taken judicial notice of the ordinances and, therefore, will consider them in the context of ruling on this motion to dismiss puruant to Federal Rule of Civil Procedure 12(b)(6).

The local government defendants request that the Court take notice of (1) (Exh. 1) California Attorney General's Opinion of Sept. 10, 1987, which essentially states that the State of California considers amendments to Local Coastal Plans ("LCPs") to be subject to review by the California Coastal Commission before they become effective; (2) (Exh. 2) A letter from the director of the federal Office of Ocean and Coastal Resource Management

to the Executive Director of the California Coastal Commission asking the Commission to review the local ordinances and make certain further communications with the Federal Agency; (3) (Exh. 3) A California Coastal Commission memorandum stating that the Commission will review the challenged portion of the San Mateo ordinance; (4) (Exh. 4) Notice of public hearing regarding the San Luis Obispo ordinance, indicating the local governments intent to send the ordinance to the Calif. Coastal Commission for review; (5) (Exh. 5) Complete copy of Sonoma County Ordinance. These documents are evidence that require some foundation, and therefore are not properly considered within the confines of a 12(b)(6) motion.

Federal Preemption/Claims Under the Supremacy Clause

The first through fourth claims of the first amended complaint are based on the Supremacy Clause, Article VI, clause 2 of the Constitution, and allege that the ordinances challenged are preempted by a specific set of federal statutes.

The United States Supreme Court recently articulated the standards to be applied by the courts in determining whether a state law (or, here, local ordinance) is preempted by a federal law:

> "[S]tate law can be pre-empted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law falling within that field is pre-empted. . . . If Congress has not entirely displaced state regulation over the matter in question, state law is still pre-empted to the extent it actually conflics with mederal law, that is, when it is impossible to comply with both state and federal law, . . . or where the state law stands as an obstacle to the accomplishment of the full purposes and objective of Congress." *California Coastal Commission v.*

Granite Rock Co., —— U.S. ——, 107 S.Ct. 1419, —— L.Ed.2d —— (1987)

Therefore, in determining whether the ordinances are preempted by the federal statutes in question, the Court first examines whether Congress intended to occupy the field addressed by the particular federal law; if not, whether the ordinance in question makes it impossible to comply with the allegedly preemptive federal law; or, whether the ordinance amounts to an obstacle to fulfilling the purposes of the federal statute

Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act ("OSCLA") deals specifically with the geographical location defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters . . . and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. section 1331(a).

The terms "navigable waters" and "internal waters" are terms acknowledged internationally for determining jurisdiction over submerged geographical regions. Waters which are farther inland than the general coastline (e.g., bays, inlets) are termed internal waters of each state, while waters up to three miles seaward of the coastline are within the individual state's boundary and jurisdiction as part of what has been termed the "marginal sea." See *U.S. v. Maine*, —— U.S. ——, 105 S.Ct. 992, 83 L.Ed.2d 998. *See* also, 43 U.S.C. section 1312. Moreover, the state's seaward boundary might extend farther than three miles if it has been so determined prior to implementation of the OSCLA. 43 U.S.C. section 1312.

It is clear from a reading of the OSCLA that the geographical location addressed in the statute is the outer continental shelf, only. This is federal submerged land, outside the seaward boundary of California.

The OSCLA specifically reserves rights for the states, expresses acknowledgement of states' concerns over their coastal environments 43 U.S.C. section 1332(5), and reserves some rights to the states to regulate regarding development of the coastal areas. The pertinent language is as follows:

> "the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, . . . and of related development and activity should be considered and recognized, . ." 43 U.S.C. section 1332(5).

Based on the language in the declaration of policy, Congress did not intend to occupy the field with regard to regulation of the coastal areas of the states.

Moreover, the Act deals specifically and only with the geographical region of the outer continental shelf, and does not address coastal land use in any substantive way other than to ackonwledge the states' rights. Comparing the federal act with the local ordinances, there is no actual conflict.

Upon examination of the complaint, there is no allegation of impossibility to the continuance of off-shore drilling, only additional expense and inconvenience. Therefore, the ordinances are not true obstacles to the accomplishment of the federal purpose.

Because the language of the OSCLA does not occupy the field, and because, based on the complaint before the Court, the ordinances do not render off-shore oil drilling on the outer continental shelf infeasible, the ordinances are nct preempted by the OSCLA; therefore, the first claim is dismissed for failure to state a claim under the Supremacy Clause.

Coastal Zone Management Act

The second claim in the first amended complaint alleged that the ordinances at issue are pre-empted by the federal Coastal Zone Management Act ("CZMA"), and the ordinances therefore violate the Supremacy Clause.

For the following reasons, this claim is misplaced. The CZMA is a federal act which, rather than legislating a Coastal Zone Program for the states, instead creates a framework under which the states are to enact their own coastal programs. The CZMA is the federal government's "carrot and stick" program enacted to ensure that the states, in creating local laws regarding the coastlines, will consider the national interest along with valid local interests. *See generally*, 16 U.S.C. §§ 1451 et seq.

There is no question that, unlike the OCSLA, the CZMA covers at least some of the geographical territory regulated by the ordinances. 16 U.S.C. section 1453(a) (coastal zone means coastal waters and adjacent shore land). Under the CZMA the states are to enact their own coastal programs. The states' programs are to be approved by the U.S. Secretary of Commerce if they satisfy certain conditions imposed by the federal act. 16 U.S.C. §§ 1454(h), 1455(e).

In order to receive certain federal monetary assistance provided for under the CZMA, the state programs must satisfy certain conditions imposed in the Act, including requirements that the state coastal management program provide for adequate consideration of the national interest involved in the planning and in the siting of facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. *Id.* § 1455(c)(3)(B).

California has a coastal program now in effect which has been approved by the Secretary of Commerce under the CZMA. That program is embodied in Section 30000

et seq. of the California Public Resources Code (The California Coastal Act of 1986. Cal. Pub. Res. Code § 30000). *See American Petroleum Institute v. Knecht*, 609 F.2d 1306, 1309 (9th Cir. 1979) (wherein the Ninth Circuit affirmed a district court decision holding, *inter alia.*, that the federal approval of the CZMA complied with the act's requirements).

The federal government's approval of the California program presumes that the program gives attention to the national interests articulated in the Act. As discussed in the foregoing discussion of the ripeness issue, the California Coastal Commission must review the ordinances and it has not yet had an opportunity to do so. There is no reason for the Court to conclude at this stage that the California Coastal Commission will not enforce the provisions of its own federally-approved program in determining whether the ordinances are legally sound. Moreover, because the California Act incorporated acknowledgment of the national interest via the CZMA, the Commissions' review will afford a clearer record concerning whether the ordinances frustrate the national interest (further supporting the conclusion that to the extent that the ordinances fall within the coastal zone, the geographical area covered by the California Act, the issues raised in the first amended complaint are not ripe for review by the federal court).

As to the issue of preemption, the CZMA does not occupy the field of regulation of coastal zone lands; there is nothing in the ordinances, when compared with the broad language of the CZMA, to indicate that there is actual conflict between the ordinances and the CZMA; and while the complaint alleges that the local purpose is to frustrate the national policy articulated in the OSCLA, the CZMA does not require the states to allow any particular type of facility to be cited in the coastal zone. Therefore, the motion to dismiss under 12(b)(6) is granted as to the second claim for relief under the Supremacy Clause.

Alleged Violation of Supremacy Clause Due by Infringement of Right of Regulation Reserved for the National Coast Guard

The third and fourth causes of action allege that three particular acts granting rights and responsibilities to the Coast Guard concerning the licensing and certification of vessels and tankers, and the safety of the waterways preempts the ordinances regulating land use along the coast. The first amended complaint bases these claims on allegations that by possibly restricting port support facilities for off-shore oil drillers, the land regulation act conflicts with the federal act.

Upon review, the federal acts in question, like the OSCLA, deal with entirely different subject matter than the ordinances.

The Ninth Circuit has previously rejected an oil company's claim that the Ports and tanker Safety Act of 1978 (fourth claim for relief) was preempted by a state statute regulating tanker discharges in state waters. *Chevron U.S.A. v. Hammond*, 726 F.2d 483 (9th Cir. 1984), *cert. denied*, —— U.S. ——, 106 S.Ct. 2686, —— L.Ed.2d —— (1985). Thus, even a state act regulating the same subject matter as the federal act in question has been held not to be pre-empted.

Concerning the licensing act addressed in the third claim for relief, the Supreme Court has held that the purpose of that act was restricted to affording protection from the perils of maritime navigation. *Huron Cement Company v. Detroit*, 362 U.S. 440, —— S.Ct. ——, —— L.Ed.2d —— (1960). Moreover, the Supreme Court has held that the mere fact that a vessel has been federally licensed does not mean that it can ignore federal or *state* rules or regulations so long as those rules do not specifically deal with design or construction specification. *Ray v. ARCO*, 435 U.S. 151, 168-69, —— S.Ct. ——, —— L.Ed.2d —— (1978) (addressing the

Ports and Waters Safety Act of 1972, fourth claim for relief herein).

Based on the foregoing, the third and fourth claims in the first amended complaint fail to state a claim for relief under the Supremacy Clause because the ordinances challenged are not pre-empted by the federal acts based on the test articulated in *California Coastal Commission v. Granite Rock*, supra, 107 S.Ct. at 1425.

Allegation of Commerce Clause Violations

The sixth through tenth causes of action in the first complaint address in whole or in part the issue of whether the ordinances violate the commerce clause.

The Supreme Court stated the basic test for commerce clause violations in *Pike v. Bruce Church*, 397 U.S. 137, 142-43, —— S.Ct. ——, —— L.Ed.2d —— (1969).

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. Occasionally the Court has candidly undertaken a balancing approach in resolving these issues . . but more frequently it has spoken in terms of 'direct' and 'indirect' effects and burdens. *Id.*

The Supreme Court further clarified the standard in *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470-73, wherein the Supreme Court held that a Minnesota milk packaging law did not violate the commerce clause. The Court explained that courts must look behind the fact that a statute deals with a subject of legitimate

concern, such as environmental protection and resource conservation, to whether the true purpose of the law is, in reality, "simple economic protectionism." If the real purpose is economic protectionism, then the state law is almost declared per se invalid under the commerce clause. If, on the other hand, the state law is not based on economic protectionism, and if it deals even handedly with intra- and inter-state commerce, then the only question left for the court is whether, under *Pike v. Bruce Church*, the law is clearly excessive in relation to the local benefit; or, stated differently, whether another approach would be equally effective to the state purposes while having a lesser impact on interstate activities. *Id.* at 471-73.

In the instant case, the ordinances, on their faces, do not indicate that their purpose is economic protectionism. Nor does the first amended complaint allege economic protectionism as the basis for the ordinances.

Moreover, the ordinances are not directed at support facilities for outer continental shelf drillers, alone, but rather for support facilities fo rall off-shore drilling, including drilling within the state's own territorial waters. Therefore, under *Minnesota v. Clover Leaf*, the ordinances regulate support facilities even handedly, affecting both in-state and out-of-state (federal waters) off-shore oil producers.

For these reasons, the issue left for determination by the court as to the commerce clause allegations is whether the manner of regulation is "clearly excessive" in relation to the purpose of the ordinances. This necessitates inquiry into the stated purposes behind each of the local ordinances.

Three of the ordinances clearly state that their only named purpose is the protection of the local environment, natural resources and economy. These are: San Mateo, the County of San Luis Obispo, and the ordinance of

the City and County of San Francisco. First of the ordinances state a mixed purpose, protection of the local environment and expression of opposition to the proposed drilling on the outer continental shelf. These are: Sonoma County, Monterey County, Santa Cruz County, the City of Monterey and the City of Morro Bay. Finally, the local ordinances of the following jurisdictions state no purpose: the City of San Diego, the City of San Luis Obispo, and the City of Santa Cruz.

Next, in determining whether the method of regulation is clearly excessive, the court examines the different methods used by each ordinance. Five of the ordinances impose some form of moratorium. The rest leave issuance of permits up to the voters of the locality. An absolute moratorium, in general, is a harsher form of regulation than examination of permits on a case-by-case basis. On the face of the complaint and the ordinances alone, there is no indication that a less harsh method of regulation could not be found to further the concerns of the local government, with the exception of the San Francisco ordinance, which puts a 2-year limit on the moratorium. Based on this analysis, the Court finds that those ordinances imposing absolute moratoriums are not clearly free from possible violation of the commerce clause, but further examination of evidence of alternative possibilities is necessary for the Court to determine whether such moratorium ordinances violate the commerce clause. At the same time, the Court distinguishes those ordinances with a clearly stated purpose only to protect the environment, and which do not impose an absolute moratorium on permit issuance (San Luis Obisop County, only), and holds that as a matter of law, these ordinances do not, on their faces, violate the commerce clause. The remaining ordinances, those which state mixed purposes but which allow examination of permits on a case-by-case basis do not violate the Commerce Clause because although their purposes are mixed,

they are not discriminatory and do not represent economic protectionism.

The Court, therefore, grants the motion to dismiss under 12(b)(6) as to the 6th through 10th claims, to the extent that commerce clause violations are alleged, as to all ordinances except those imposing absolute moratoriums: San Mateo, San Diego County, City of San Diego, City of Oceanside, and City and County of San Francisco.

Due Process and Equal Protection Claims

It is well settled that the standard to be applied when questioning a state or local law under the Equal Protection Clause is the "rational basis" test. *Minnesota v. Clover Leaf, supra,* 449 U.S. at 461. The test is whether there is discrimination, and whether that discrimination bears a rational relationship to a legitimate state purpose. *Metropolitan Life Insurance C. v. Ward,* 470 U.S. 869, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985).

Here, the discrimination is between oil drilled on-shore and off-shore. The ordinances (other than those of the City of San Diego, the City of San Luis Obispo, and the City of Santa Cruz, which contain no statement of purpose) generally state their purpose to include protection of the coastal environment from hazards particularly associated with off-shore drilling. Thus, the ordinances appear on their face to have stated a rational basis for the distinction between on-shore and off-shore oil production.

The Due Process question raised by the fifth cause of action is more difficult to answer. The issue raised is whether subjecting the issuance of land use permits to a voter referendum violates the due process clause by depriving permit applicants of a hearing with a complete record suitable for judicial review. Because the Court has previously held that this issue is not ripe for review at this stage, the Court refrains from addressing the Due Process question raised by the voter referendums.

At the core of the issue is the requirement that the Court determine whether the activity conducted by voter referendum in the particular ordinance is a *legislative* or a *quasi-adjudicative* act. *See, Yost v. Thomas,* 36 Cal. 3d 561, 571-73 (1984). In *Yost,* the California Supreme Court held that an amendment to the Local Coastal Plan (LCP) is a legislative function and can be done by voter referendum. Under that analysis, the ordinances themselves, which the California Attorney General opines are amendments to local LCPs (see discussion of judicial notion of Attorney General Opinion Letter) were legally passed by voter referendum. However, the California Supreme Court has also held that permit application procedures themselves are adjudicatory and therefore require hearings and findings in order to ensure due process. *San Diego Building Contractors Association v. City Council of San Diego,* 13 Cal 3d 205, 211 (1975); *Wiltshire v. Superior Court,* 172 Cal App. 3d 296, 304 (1985). Under this analysis, if the Court were to determine that the ordinance in question granted adjudicatory functions to voter referendums, then those ordinances might violate the due process clause.

Based on the foregoing, the Court holds as follows on each of the issues raised by the various motions to dismiss now before the Court:

1. The motions to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(1), based on lack of subject matter jurisdiction, are (A) GRANTED based on lack of ripeness as to all ordinances except the ordinances of the City of San Diego, the County of San Diego and the City of Oceanside, which impose moratoriums of undefined duration; (B) GRANTED as to the remaining ordinances of the City of San Diego, the County of San Diego and the City of Oceanside, but only to the extent that the ordinances cover land within the "Coastal Zone," and (C) DENIED as to the ordinances of the City of San Diego, the County of San Diego and the City of

Oceanside, to the extent that the ordinances imposed absolute moratoriums covering geographical areas outside the Coastal Zone.

2. The motions to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim, are (A) GRANTED as to claims 1 through 4, for failure to state a claim of preemption under the Supremacy Clause; (B) GRANTED as to claims 6 through 10 to the extent that the claims are based on violations of the commerce clause, except as to those ordinances imposing absolute moratoriums, which are the City of San Diego, the County of San Diego and the City of Oceanside; (C) GRANTED as to all claims under the equal protection clause; and (D) GRANTED as to alleged violations of the due process clause, *except* that the Court, having found that the issue of voter-determined permits is not ripe for review, refrains from examining the question of Due Process raised as to the fifth claim for relief.

MOTION FOR SUMMARY JUDGMENT

Plaintiffs move the Court for "partial" summary judgment on the issues of supremacy, commerce, equal protection and due process on the first, sixth, seventh, eighth, ninth and tenth claims for relief in the first amended complaint. The Court, having held as outlined above, finds that the only issues remaining for determination upon summary judgment are the alleged violations of the Commerce Clause raised in claims six through ten, only as to the ordinances of the City of San Diego, the County of San Diego and the City of Oceanside and only to the extent that those ordinances affect an area within their jurisdiction located outside the "coastal zone."

Essentially the same issues are raised by plaintiff's motion for summary judgment as were raised by the foregoing motions to dismiss. However, as to the motion for summary judgment, the Court has examined evidence submitted the parties and intervenors on each of the issues.

Plaintiffs have filed several declarations in support of their motion for partial summary judgment. These include the declaration and supplemental declarations of Douglas Henderson, Executive Director of WOGA; the declaration of Charles Matthews, NOIA president; and the declaration of Robert E. Kropschot, General Manager of the Exploration department of the Western Region of Chevron, U.S.A., who is a geologist and who wishes to testify as an expert. Relevant evidence presented by these declarations includes Henderson's statement that there have been no new leases of off-shore drilling rights within California's 3-mile territorial waters limit since 1969. [Henderson Decl. ¶ 3.] This evidence tends to support plaintiffs allegations of commerce clause violations; plaintiffs take the position that because there are no *off-shore in-state* oil producers, the argument that the law is applied even handedly to both in-state and out-of-state off-shore drilling operations is unavailable to defendants; plaintiffs contend that there is discrimination because all off-shore drilling is, in effect, out-of-state and it is treated differently from all on-shore drilling which is by definition, in-state.

Also relevant is a statement made by Henderson in his first declaration in which he makes an admission that support facilities could be built off-shore, albeit at greater cost. The statement tends to undercut plaintiffs' claims under the supremacy clause to the extent that the ordinances do not render compliance with the federal statute impossible or unlikely. The supplemental declaration of Henderson describes the proposed on-shore support facilities and claims that the facilities themselves would have little impact on the coastal ecology.

Defendants and intervenors have filed numerous declarations and supporting documentation, including maps and studies, in opposition to the motion for partial summary judgment. The Court pays particular attention to the declaration of William Travis, submitted by the defend-

ants counties, and the declaration of Dwight Sanders, submitted by the state as intervenor.

William Travis, Deputy Director of the San Francisco Bay Conservation and Development Commission, attests that he disagrees substantially with Henderson as to the extent and location of support facilities needed for offshore oil drilling on the OSC. Primarily, he contends that it is premature to discuss what facilities will be needed or where, prior to the development of any offshore projects by members of plaintiffs. This, at minimum, presents a dispute in evidence on the issue of whether there is preemption by the OCSLA; it raises a question as to whether the ordinances make it impossible to comply with the OCSLA or whether the ordinances even pose a true obstacle to off-shore development.

Dwight E. Sanders, Chief of the Division of Research and Planning for the California State Lands Commission, attests that the oil produced off-shore has a higher sulpher content than does most of the oil produced on-shore, and might therefore have a greater environmental impact in processing. [Sanders Decl., ¶ 24]. This testimony tends to support defendants' and intervenors' contention that the state had a rational basis for distinguishing between on- and off-shore oil support facilities. At minimum, it tends to raise a question of fact as to alleged violations of the equal protection and due process clauses.

Based on the foregoing, plaintiffs have failed to meet their burden of proof under *Celotex v. Catrett*, 477 U.S. ——, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Plaintiff's motion for partial summary judgment is denied. Therefore, the only issues remaining for determination by the Court under the first amended complaint are the allegations of commerce clause violations in the sixth through tenth claims, but only as to the ordinances of the City of San Diego, the County of San Diego and the City of Oceanside, and only to the extent that those ordinances

affect geographical areas within their jurisdictions which fall outside the coastal zone.

IT IS SO ORDERED.

Dated: April 21, 1988

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
Judge
United States District Court

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 87-5190 (CBM)

WESTERN OIL AND GAS ASSOCIATION,
a nonprofit corporation, and
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
SAN DIEGO COUNTY, COUNTY OF SANTA CRUZ,
CITY AND COUNTY OF SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF OCEANSIDE. CITY OF SAN DIEGO,
CITY OF SAN LUIS OBISPO, AND THE CITY OF SANTA CRUZ,
Defendants.

STATE OF CALIFORNIA, acting by and through the
CALIFORNIA COASTAL COMMISSION and the
CALIFORNIA STATE LANDS COMMISSION,

NATURAL RESOURCES DEFENSE COUNCIL AND
THE LEAGUE FOR COASTAL PROTECTION,
Defendants in Intervention.

ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO FILE FIRST AMENDED COMPLAINT

[Filed Sep. 6, 1988]

This matter is before the Court on plaintiffs' motion for reconsideration of the Court's order of April 21, 1988 which dismissed the action on all issues and as to all counties as to the City of San Diego, the County of San Diego and the County of Oceanside to the extent that those local governments impose absolute moratoriums covering a geographic area which falls outside the "coastal zone" and is therefore not subject to appeal to California Coastal Commission. Plaintiffs' motion also requests leave to file a second amended complaint alleging that a permit application under the San Luis Obispo ordinance has been put to a voter referendum and that the permit was denied by that referendum vote. All parties have signed a stipulation requesting that the Court enter a final judgment as to all issues dismissed in the April 21 memorandum order, pursuant to Federal Rule of Civil Procedure 54(b).

Previously, several motions to dismiss were simultaneously brought by the various defendants to this action. The motions to dismiss were granted based on lack of ripeness except as to certain allegations against the City of San Diego, the County of San Diego and the City of Oceanside. Plaintiffs' motion for summary judgment, heard at the same hearing, was denied. Although basing its holding on the issue of lack of ripeness, the Court addressed in its memorandum order the other issues raised by the motions to dismiss and for summary judgment. Although the Court found no commerce or supremacy clause violations, the Court left open the unripe question of whether voter referendums determining the issuance of permits to build on-shore support facilities violated the due process clause. [A copy of the Court's memorandum order of April 21, 1988 is attached hereto as Exhibit A.]

Plaintiffs' current motion for reconsideration and motion to file a second amended complaint is based on the fact that at the time of the Court's April 21 order no

applicant had actually been denied a permit under the ordinances at issue. Plaintiffs contend that a permit has now been denied to Shell Oil under the San Luis Obispo ordinance and that the issue is therefore now ripe for review. Plaintiffs also contend that although all the proposed support facilities are to be located in the Coastal Zone, some of the proposed pipeline from the project would go outside the Coastal Zone and is therefore not under the jurisdiction of the California Coastal Commission. The several defendants independently oppose this as a basis for reconsideration because that vote is not final. Based on evidence presented by the defendants, the permit application process has since been changed. The application must again go to the County and then again to voter referendum. Defendants contend that the issue presented by the San Luis Obispo ordinance is still not ripe because it must still go back to the County, then to another voter referendum and is finally appealable to the California Coastal Commission.

Plaintiffs contend that the San Luis Obispo vote is a new material fact for purposes of reconsideration under Local Rule 7.16, and that the Court should now therefore address the legal issue of due process violation posed by voter referendum of permit applications. Plaintiffs would have the Court extend its reconsideration to all ordinances. Defendants contend that the issue is still not ripe. Plaintiffs have also requested the Court to revisit its ruling on the commerce clause and supremacy clause causes of aciton, although plaintiffs have not actually provided new evidence or other basis for reconsideration cognizable under Local Rule 7.16.

Pursuant to Local Rule 7.16 for the Central District of California, a motion for reconsideration may be made only upon one of three enumerated grounds. In order to move the Court for reconsideration of a decision upon previous motion, a party must demonstrate either (a) a material difference in fact or law from that presented to

the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. Based on the evidence presented by the parties, the Court finds the San Luis Obispo permit referendum vote is not a new material fact for purposes of reconsideration, and upon that basis denies plaintiffs' motion for reconsideration. Despite the lack of basis for reconsideration, the Court has reviewed the motion for reconsideration of plaintiffs' summary judgment on its merits and denies the relief sought.

All parties to this action have signed a stipulation requesting that in the event the Court denies plaintiffs' motion for reconsideration the Court instead issue an order pursuant to Federal Rule of Civil Procedure 54(b), thereby entering judgment as to all defendants and issues other than those concerning the City of San Diego, the County of San Diego and the City of Oceanside as reserved in the Court's order of April 21, 1988.

The Court will sign the accompanying stipulation pursuant to Rule 54(b). Plaintiffs' motion for leave to file a second amended complaint is denied without prejudice.

IT IS SO ORDERED.

DATED: Sept. 6, 1988

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
Judge
United States District Court

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-87-05190 (CBM)

WESTERN OIL AND GAS ASSOCIATION,
a nonprofit corporation, and
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
SAN DIEGO COUNTY, COUNTY OF SANTA CRUZ,
CITY AND COUNTY OF SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF OCEANSIDE, CITY OF SAN DIEGO,
CITY OF SAN LUIS OBISPO, AND THE CITY OF SANTA CRUZ,
Defendants.

STATE OF CALIFORNIA, acting by and through the
CALIFORNIA COMMISSION and the
CALIFORNIA STATE LANDS COMMISSION,

NATURAL RESOURCES DEFENSE COUNCIL AND
THE LEAGUE FOR COASTAL PROTECTION,
Defendants in Intervention.

ORDER FOR ENTRY OF JUDGMENT PURSUANT TO RULE 54(b)

[Filed Oct. 3, 1988]

Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court finds that there is no just cause for delay in the entry of final judgment as to all of the parties hereinafter specified, i.e., all defendants other than the City of San Diego, County of San Diego and the City

of Oceanside (hereafter, "San Diego defendants"). The reasons for this Order are as follows:

1. The order of this Court filed April 21, 1988 disposes of this case completely as to all defendants except the San Diego defendants. No issue of any kind remains except as to these defendants.

2. Because the ruling of the Court of Appeals on certain legal issues may be significant in the San Diego cases, proceedings in the San Diego cases are stayed pending resolution of the appeals to be taken in the other cases.

3. Said final judgment in the non-San Diego cases and said stay in the San Diego cases is in the public interest and in the interest of judicial economy. It minimizes the risk of duplicative trials and appeals and provides for the earliest possible disposition of important questions of public concern and significance.

4. Judgment has been entered on the issue of ripeness under federal constitutional law. Although the claims involving the San Diego defendants involve some similar factual issues, the Court finds that in reviewing the judgment now entered under Rule 54(b), the Ninth Circuit would not be required to review legal or factual issues still pending at the trial level because the narrow legal question of ripeness is not at issue in the action remaining below.

Pursuant to the foregoing, it is ordered and it is expressly directed that judgment in the form annexed hereto be entered pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DATED: Oct. 3, 1988

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
Judge
United States District Court

Copies to:

William B. Conners
Asst. City Attny
City of Monterey
City Hall
Monterey, C A93940

John Roddy
Deputy City Attny
214 Van Ness Avenue
San Francisco, CA 94102-4574

John A. Sauerman, Deputy A/G
Mary Gray Holt, Deputy A/G
3580 Wilshire Blvd.
Los Angeles, CA 90010

Richard J. Denney, Jr., et al.
McCUTCHEN BLACK VERLEGER & SHEA
600 Wilshire Blvd.
Los Angeles, CA 90017

James Botz
Stephen Butler
575 Administration Dr. #116A
Santa Rosa, CA 95403

Morris G. Hill
Deputy County Counsel
1600 Pacific Highway
Room 355
San Diego, CA 92101-2469

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-87-05190 (CBM)

WESTERN OIL AND GAS ASSOCIATION,
a nonprofit corporation, and
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
SAN DIEGO COUNTY, COUNTY OF SANTA CRUZ,
CITY AND COUNTY OF SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF OCEANSIDE, CITY OF SAN DIEGO,
CITY OF SAN LUIS OBISPO, AND THE CITY OF SANTA CRUZ,
Defendants.

STATE OF CALIFORNIA, acting by and through the
CALIFORNIA COASTAL COMMISSION and the
CALIFORNIA STATE LANDS COMMISSION,

NATURAL RESOURCES DEFENSE COUNCIL AND
THE LEAGUE FOR COASTAL PROTECTION,
Defendants in Intervention.

JUDGMENT

[Filed Oct. 3, 1988]

Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, it is hereby ordered, adjudged and decreed that plaintiffs shall take nothing by the Complaint herein against Sonoma County, San Mateo County, Monterey County, San Luis Obispo County, County of Santa Cruz, City and County of San Francisco, City of Monterey, City

of Morro Bay, City of San Luis Obispo and City of Santa Cruz, said defendants to have and recover their costs herein.

DATED: Oct. 3, 1988

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
Judge
United States District Court

copies to:

Richard J. Denney, Jr.
MCCUTCHEN BLACK VERLEGER & SHEA
600 Wilshire Blvd.
Los Angeles, CA 90017

James Botz
Stephen Butler
575 Administration Dr. #116A
Santa Rosa, CA 95403

Morris G. Hill
Deputy County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101-2469

William B. Conners
Asst. City Attny.
City of Monterey
City Hall
Monterey, CA 93940

John Roddy
Deputy City Attorney
214 Van Ness Avenue
San Francisco, CA 94102-4574

John A. Saurenman
Mary Gray Holt
Deputy Atts. General
3580 Wilshire Blvd.
Los Angeles, CA 90010

APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-87-05190-CBM (GHKx)

WESTERN OIL AND GAS ASSOCIATION,
a nonprofit corporation, and
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
SAN DIEGO COUNTY, COUNTY OF SANTA CRUZ,
CITY AND COUNTY OF SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF OCEANSIDE, CITY OF SAN DIEGO,
CITY OF SAN LUIS OBISPO, AND THE CITY OF SANTA CRUZ,
Defendants.

STATE OF CALIFORNIA, acting by and through the
CALIFORNIA COASTAL COMMISSION and the
CALIFORNIA STATE LANDS COMMISSION,

NATURAL RESOURCES DEFENSE COUNCIL
AND THE LEAGUE FOR COASTAL PROTECTION,
Defendants in Intervention.

DECLARATION OF DOUGLAS HENDERSON
IN SUPPORT OF MOTION FOR RECONSIDERATION
AND FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT

[Filed Jan. 23, 1988]

Date: August 8, 1988

Time: 10:00 a.m.

Place: Courtroom 11

1. My name is Douglas Henderson. I am the same Douglas Henderson who previously filed two declarations in this matter. The facts set forth herein are within my personal knowledge and I could testify with respect thereto, or, in the alternative, they are matters of public record.

2. On Tuesday, June 7, 1988, permits for essential onshore facilities to support operations on an offshore platform were submitted to voters in the County of San Luis Obispo ("County"), under the ordinance challenged in this case. The voters rejected the permits which were applicable to facilities both inside and outside the coastal zone. In more detail, the facts are as follows:

a. Under date of January 26, 1988, the Board of Supervisors of the County approved the following permits and other administrative actions of the County, for onshore facilities to support Platform Julius, a project in the outer Continental Shelf of the United States, on federal leases, owned by members of plaintiff Western Oil and Gas Association ("WOGA").

(1) Approval of an oil dewatering plant and accompanying pipelines;

(2) Approval of an oil pumping station and accompanying pipeline; and

(3) Approval of a Lot Line Adjustment which would authorize creation of a 45-acre parcel on the western Nipomo Mesa through realignment of existing parcel boundaries as a location for the oil dewatering plant and pumping station referred to in (1) and (2), above.

b. The Board's approval constituted final action, except for the requirement that said permits or other ac-

tion must be submitted to a referendum. The vote on the referendum took place on June 7. The project was rejected by a vote of approximately 55% to 45%. A true copy of the pamphlet submitted to the voters is annexed hereto as Exhibit A.

c. The pipeline portion of one of the permits included construction both inside and outside the coastal zone.

3. The Court has indicated that further examination of alternatives is necessary for the Court to determine whether the absolute moratorium (San Diego County, City of San Diego and City of Oceanside) ordinances violate the Commerce Clause. The alternative to the absolute prohibition is a permit system which allows a project to be reviewed on its merits. The only alternative to siting facilities in a jurisdiction with an absolute moratorium ordinance is to site them somewhere else. These are the only choices open to WOGA members at this time. There is no permissible alternative way to bring oil and gas from the OCS produced within 100 miles of San Diego County into San Diego County, and particularly, into the area outside the coastal zone, by far the largest part of the County.

4. Finally, with regard to the due process issue discussed in the Court's opinion, I attach as Exhibit B to this declaration a true and correct copy of a Memorandum Re Legal Issues Concerning San Luis Obispo Measure A, dated February 19, 1988, from Ralph Faust, Chief Counsel to the California Coastal Commission.

I declare under penalty of perjury the foregoing is true and correct.

Executed this 23rd day of June, 1988, at Glendale, California.

/s/ Douglas Henderson
DOUGLAS HENDERSON

[Exhibits and Proof of Service Omitted in Printing]

APPENDIX G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-87-05190-CBM (GHKx)

WESTERN OIL AND GAS ASSOCIATION,
a nonprofit corporation, and
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
SAN DIEGO COUNTY, COUNTY OF SANTA CRUZ,
CITY AND COUNTY OF SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF OCEANSIDE, CITY OF SAN DIEGO,
CITY OF SAN LUIS OBISPO, AND THE CITY OF SANTA CRUZ,
Defendants.

STATE OF CALIFORNIA, acting by and through the
CALIFORNIA COASTAL COMMISSION and the
CALIFORNIA STATE LANDS COMMISSION,
Defendant in Intervention.

SUPPLEMENTAL DECLARATION OF DOUGLAS HENDERSON IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

[Filed Jan. 4, 1988]

Date: February 8, 1987

Time: 10:00 a.m.

Place: Courtroom 11

1. My name is Douglas Henderson. I am the same Douglas Henderson who previously filed a declaration herein. I make this declaration under penalty of perjury. The facts herein are within my personal knowledge and I could testify with respect to them if called. I will first address statements made by defendants in their briefs concerning parties. I will thereafter discuss the declarations opposing the motion for summary judgment.

2. (*Parties.*) Defendants make repeated references to the fact that this suit does not have as a named plaintiff one of the companies currently applying for permits in San Luis Obispo County. The fact is that this suit was brought on behalf of all of the companies operating off the Pacific Coast, specifically including the companies currently proceeding for permits in the San Luis Obispo area. The filing of this suit was approved, as it must be, by the Board of Directors of the Western Oil and Gas Association ("WOGA"). That board includes representatives of all the companies with permit applications pending in that area, as well as substantially all of the companies which have historically bid for outer Continental Shelf ("OCS") offshore oil and gas leases. They are all producers in the Pacific OCS, and have conducted exploration in that area. The vote for filing was unanimous. Suit by WOGA instead of the individual companies spreads the burdens and cost of litigation but is otherwise no different.

3. (*Scope of Declaration.*) The declarations filed by defendants are extremely voluminous. All make essentially three points. Those points are: (1) that placing support facilities in each of the defendant counties will have serious environmental consequences (for this purpose, it seems to be assumed that the support facilities

required for each county will involve massive industrialization, including refining capability, an incorrect assumption); (2) that there are areas in the State where support activities can be located, which in the judgment of the particular declarant, are sufficient; and (3) as to counties other than San Luis Obispo, that the occurrence of lease sales offshore is highly contingent. As to (1), support activities are of various types, many of which, such as pipelines, are already present everywhere, and have essentially no impact, once installed. The idea that "massive industrialization" is required is in most instances completely without foundation. There is no problem here which ordinary land use controls are not thoroughly adequate to deal with, and those techniques are in fact quite successfully used. No showing is made by defendants as to the need for special requirements of referendum or total prohibition and the opposition papers make no effort to show the need for such special practices. With regard to (2), this declaration will point out that no showing is made by defendants that all support operations can be carried on at remote locations, and that while defendants' observations may be true on some sort of average, there are significant indisputable exceptions of a critical nature, such as pipelines to bring gas ashore, which must be local. Finally, as to (3), this declaration will establish that an OCS Five-Year Leasing Program which schedules lease sales from 1987-1991 has been promulgated by the Federal government and approved by Congress and that pre-lease sale activities are now taking place in accordance with that program.

4. (*Impacts of Support Facilities.*) The declarations filed in opposition to WOGA's motion for partial summary judgment make extensive statements with respect to the potential effect of onshore facilities in particular counties. The declarations of Mr. Travis, and the declarations filed by individual counties, devote much space to this topic. The impression conveyed is that massive industrialization necessarily results from the presence of

any support facilities for offshore activities because it is assumed that all support facilities, even including refining (which is not a support facility), will be present if any are, and because of a total failure to address the individual activities.

5. (*Similar Facilities Already Present.*) There are a variety of support activities, many of which are essentially identical to activities routinely accepted and already in place in defendant counties. They include:

(a) (*Pipelines.*) All defendant counties contain networks of pipelines for local natural gas distribution. Similarly, pipelines are needed to bring the gas ashore. Such pipelines require the digging of a trench for initial installation. Thereafter, they go unnoticed, except on the rare occasions when maintenance is needed. A second support facility, in cases where oil is taken by pipeline to market, is pipelines for oil. Their impacts are no different than gas pipelines.

(b) (*Tankship Anchorages.*) If the oil is taken by tankship to market, an anchorage for tankers is needed, which in many instances might be within the three-mile limit, for shelter reasons. Such anchorages are located up and down the State's coast, both to supply local utilities and to load locally-produced oil. All they involve is the presence of the ships themselves, plus pipelines on the sea bottom and buoys holding the necessary connecting mechanisms.

(c) (*Storage Tanks.*) Limited tankage is typically needed to temporaily store produced gas. Again, comparably large tanks are in use throughout the State for storage of natural gas pending distribution, for local water storage pending distribution, and for gasoline storage in bulk facilities for local distribution. Use of similar tanks does not present any unique industrialization effect.

(d) (*Helicopter Pads.*) Helicopters are used to take men and limited materials out to platforms and drill-

ships; helicopter operations are not unusual in any defendant county.

(e) (*Small Vessel Transportation of Men and Light Supplies.*) Similarly, smaller vessels are commonly used to take men and light materials out to platforms. The use of small local ports by vessels of comparable size to those already there does not create a perceptibly different local burden.

(f) (*Facilities for Dewatering and Removing Impurities From Oil and Gas.*) Similar facilities are found in many counties.

6. (*Facilities Normally Not Needed.*) Transportation of heavy materials, machinery and the like, normally requires major ports such as San Francisco Bay, Los Angeles or Port Hueneme. As for refining, which Mr. Travis includes as a support facility, that is simply not an activity needed in the vicinity of the production. After all, much of the oil refined in Europe comes from Arabia, and a large part of the oil refined in Texas comes from Alaska. Refining normally takes place near the market. The only processing required in the vicinity of production is removal of produced water and impurities, and plants for this are relatively small.

7. (*Needed Support Activities Vary.*) There is wide variety in support facilities needed at particular places. Where the oil is to go to market by tanker, only short pipelines to bring its ashore for dewatering and impurity removal and to take it out to an anchorage for tankers are needed. If pipelines are to take the oil to market, longer pipelines will be needed, but the anchorage may not. If, because of the total unavailability of a suitable onshore site for dewatering (treatment) facilities, it is necessary to use an offshore storage and treatment vessel, and tanker transport is used, then the only pipeline needed will be for gas. If there is a convenient local airport, an onshore helicopter pad may not be needed.

8. (*Impact of Support Facilities Relatively Small.*) Set in perspective, the areas needed for these facilities are not extensive. Each of defendant counties has from fifty to one hundred miles of coastline, extending inland for at least twenty miles. The total area in each is in the hundreds of thousands of acres. The actual area required for each major offshore project for limited tank storage, dewatering (treatment) facilities, and docks for movement of men and materials is extremely small. For example, the Environmental Impact Statement for the Exxon Santa Ynez Unit in Santa Barbara discloses that its onshore facilities occupy only about 15 acres. Final Environmental Impact Statement, Santa Ynez Unit, at III-60. Pipelines are essentially invisible, once installed. Landscaping minimizes the visual impacts of most other facilities. Yet these ordinances do not, as is the case in Santa Barbara County, attempt to limit the location of support facilities, but rather to totally exclude them.

9. (*Onshore Support Not Substantially Different From Offshore Support.*) In his declaration, Mr. Travis also states the generalized proposition that facilities needed to support onshore operations differ substantially from those used to support offshore facilities. That is a statement which is correct for some facilities and substantially incorrect for others. Mr. Travis refers to possible transportation by pipeline, rail or truck. Transportation by truck or rail is the rare exception for produced crude and is used only for small amounts of scattered local production where it is economically infeasible to build pipelines. Pipeline transportation, or in the case of movement by sea, transportation by tank ship, are the virtually universal methods for all fields with substantial production in this State. There are, of course, as Mr. Travis suggests, many examples of relatively small fields which are highly dispersed, and have relatively small local treatment processes, before production takes place. But it is equally true that there are many examples of very large fields, such as the Long Beach field, which is the second

largest in the continental United States, the Inglewood field, the Signal Hill field, the various fields in Kern County, and others. The essential facilities required, including dewatering, tanks for gas and oil storage, and pipeline transportation are essentially the same, offshore or on.

10. (*Use of Normal Land Use Processes.*) Impacts, such as those incidental to production support, are controlled through normal land use processes. I want to make it perfectly clear that WOGA and its member companies are not opposed to review of the environmental effect of those facilities through the normal permitting process, including use of a report required pursuant to the California Environmental Quality Act ("CEQA"). We do not disagree, for example, with Ms. Guzman's declaration that local control need be maintained, but that does not justify these ordinances. It is notable that nothing in any of defendants' declarations goes to the question of why those processes are insufficient, i.e., why either absolute prohibitions or special referendum requirements are appropriate.

11. (*Thoroughness of Permitting Process.*) In recent years, the permitting process for onshore support facilities for offshore operations has typically been extremely thorough. The process normally includes preparation of an environmental impact statement which comprehensively reviews the project and contributes to the complex of requirements imposed. Literally hundreds of conditions have been imposed on larger projects in order to minimize environmental effects. In some instances, relocation of facilities has been required. As the declaration of Mr. Travis points out, one requirement sometimes made and complied with is consolidation of facilities. Other facilities have been located in canyons or concealed through landscaping so as to impose very little on the visual landscape, as demonstrated by the Exxon facility at Los Flores Canyon in Santa Barbara County.

12. (*Santa Barbara County as Example.*) The Declaration of Diane Guzman, filed by defendants, although obviously intended for other purposes, shows the depth of the environmental review made in Santa Barbara, Def. Dec. at 39, which is similar to reviews made elsewhere. While that declaration refers to the "costs and strains" (as she says, 90% of those costs are reimbursed by the petroleum industry) of performing such a review, it omits to mention that the taxes paid on these facilities, which are capital intensive, far exceed any costs not directly reimbursed to the County. In addition, mitigation fees are collected against the permits for other costs to which the County is subject. Similarly, the Declaration of Peter Crawford, of San Luis Obispo County (Def. Dec. at 71), reveals the extent of the review there and the mitigations required. As I have said, the industry does not oppose this kind of exercise of local control; in fact, it tries to work closely with local authorities so that development can proceed with a minimum of problems. That is not what we are concerned with here. What we do object to, strenuously, is the singling out of OCS support facilities for special and discriminatory treatment, simply because the oil or gas is from the OCS as opposed to somewhere else, and the discriminatory imposition of special procedures solely for that reason.

13. (*Availability of Other Sites.*) Several of the declarations on file assert that the ordinances are not a significant barrier to offshore operations because of the availability of other sites where there are no such prohibitions. It is possible to make such an assertion only because these declarations bundle together different aspects of support operations and thus make a statement which may be broadly true on the average, but grossly incomplete when particular activities are considered. I next set forth some examples. In order to avoid any question of factual conflict, I will focus on those where I believe there can be no real issue.

(a) (*Local Facilities Needed for Gas.*) The first item I address is natural gas. Offshore of California, natural gas cannot practically be pipelined enormous distances out beyond the three-mile limit along the coast and then brought ashore at a remote location and this is never done. Instead, gas is always brought ashore by pipeline as directly as possible from the offshore platform to a point onshore where it will be purified before delivery to a gas utility or transportation company. An example is Exxon's Santa Ynez Unit project, offshore of Santa Barbara County. Exxon processes the oil offshore in a flating storage and treatment vessel and takes it by tanker to market. But Exxon was unable to market the gas until permits were obtained for a pipeline to carry the gas to an onshore plant. All it could do with the gas, prior to construction of onshore facilities, was to put it back into the ground. Had the deposits of gas been extremely large, as is true of some deposits in the North Sea, it might have been economical to take the gas a considerable distance. In general, however, that is not the case in the offshore Pacific area. In addition, there is no logical reason why the very substantial costs for all this additional pipelining, even where economically possible, should be incurred at all. Both San Diego County and San Mateo County are substantial gas markets, yet both counties prohibit such facilities absolutely. No reason has been given why pipelining OCS gas into San Diego County should be prohibited any more than pipelining gas from Texas or Canada or Northern California. And no reason has been given why such facilities should require a referendum any more than a pipeline to bring other gas, whether it be to San Luis Obispo, Sonoma, or Monterey counties.

(b) (*Need for Local Facilities for Helicopters; Use of Local Ports for Small Vessels.*) The same problem exists with respect to helicopter facilities. Helicopters carry men and materials out to the platforms. But helicopters are airships of limited range. Distances can be extended,

but always at a price in load: the more fuel they have to carry, the less the load, the more trips, and the higher the cost. Although supply boats have more range, fundamentally the equation is the same: the farther away they have to operate the more time is wasted and the more it costs. At some point distance makes the service impractical.

(c) (*East San Francisco Bay No Answer.*) By paragraphs 17, 18 and 19 of his declaration, Mr. Travis suggests that sites there described would suffice for support facilities for Northern California development. The areas described, however, are in Solano, Contra Costa, Alameda, and other counties located east and north of San Francisco Bay, and all are at least thirty miles from the seacoast. Pipelines across the defendant counties would be needed to reach the areas he refers to and those pipelines would require approval through the referendum process. (It would simply be prohibited in San Mateo.) In addition, a facility somewhere near the coast would be needed to dewater the crude oil and remove sulfur compounds from the natural gas produced. The salt water content of crude oil ranges up to eighty percent and higher as a field reaches maturity and it is both economically and environmentally unsound to transport all that salt water with the oil for an unnecessary thirty or forty miles. Mr. Travis' observations are perfectly correct, to the extent that he is referring to refinery processing; that is generally carried on at some distance from production. But removal of produced water and like impurities must be done before long distance transportation. This is what is meant by "treatment." No one wants to refine crude oil in new facilities to be built in defendant counties. What is needed are pipelines, treatment (dewatering) facilities, limited storage, helicopter pads and port facilities for the limited movement of men and supplies. Mr. Travis does not explain how it would be practical to confine those facilities to the areas suggested and in fact it is not.

14. (*Existing Sites Sometimes Problematic.*) I have noted that Mr. Travis refers to the fact that operations at considerable distances to the north have been supported out of Port Hueneme, in Ventura County. It is correct that men and materials for operations in Northern Santa Barbara and Southern San Luis Obispo Counties have been supported from Port Hueneme. What is ignored is that ports and locations farther north would have been used if local policies similar to those challenged here had not prevented their use. The result of those policies is to require, for instance, a nine-hour ride each way when a new crew is brought out by boat to a platform to relieve an existing crew, a condition which substantially increases costs and imposes a burden on the personnel involved. I note that in paragraph 23 of his declaration Mr. Travis adverts to the fact that crew and supply bases are situated in Port Hueneme rather than in Morro Bay. Morro Bay is one of the communities which has express ordinances in effect prohibiting use of its facilities for such purposes.

15. (*Costs of Use of Distant Facilities.*) None of the declarations systematically addresses the issue of relative cost, other than to urge that there are many variables affecting cost and many factors which affect choice of location for facilities, and further to suggest that actual costs can only be known in the case of individual projects. All of those statements are true, but they omit a great deal. Thus, a referendum will always have a cost. It costs money to buy time on television, to put out literature and to participate in a campaign. A referendum also adds a considerable incalculable cost because of the uncertainty it introduces. One can attempt to comply in a rational way with announced planning department policies. One does not know what an electorate will require and a vote gives one little clue as to what needs to be done to fix a project. One knows that opposition in a referendum will be based in part on opposition to OCS development itself, something which is not actually within local authority.

Basically, a referendum carries the certainty that in some unforeseeable percentage of cases, all the costs of buying leases, exploring them, and engineering a project and working it through a planning department will be for nothing and either the value of the lease lost or the expense of an offshore treatment plant added. For the San Diego-type ordinances, with their total prohibitions, development is simply impractical. For the others, one may not know exactly what the additional individual costs are, but they will always be substantial.

16. (*Continuing Availability Questionable.*) Defendants err in assuming that other areas will continue to be available. It is also a mistake to analyze these ordinances in terms of the locations which are available now. Adoption of these ordinances has been brought about in a series of systematic campaigns by organizations opposed on principle to any offshore oil development. Those campaigns have been waged successfully in one county after another and there is no reason to suppose that they will cease at this time. Indeed, we have been advised of the pendency of at least one more such initiative since this case was filed. What these ordinances do is make the State off limits by degrees. That intervenor Coastal Commission is engaged in that same project is shown by the announced policy of the Coastal Commission, as submitted by defendants. It is that there shall be no offshore development north of the Santa Maria River (i.e., north of northern Santa Barbara County). That covers the northerly 1,000 miles of the State. We quote:

> "The Commission has repeatedly found in reviewing previous 5-Year Lease Programs and previous lease sales that the waters north of the Santa Maria River to the Oregon border, which include the waters off the San Mateo coastline, are unsuitable for offshore oil and gas development."
>
> Def. Dec. at 134.

17. (*Offshore Lease Sales Scheduled.*) The third general point made in defendants' declarations is that future lease sales are highly contingent, because of an upcoming change in administration. I point out, however, that the Federal OCS Five-Year Leasing Plan, which schedules such sales within the next five years, is required by the Outer Continental Shelf Lands Act. 43 U.S.C. § 1344. That Act provides for submission to the Congress of the plan 60 days in advance of approval. That time has passed without negative congressional action. Permits for geophysical exploration (i.e., a type of sonar study of the subsurface structures without drilling) have been given and such activities have taken place. The companies must, over the next several months, make their decisions on how much to bid. In that regard, the effect of these ordinances will never be better presented than it will here, for the practical reason that if the estimates of cost go too high as against potential reward, the decision will simply be not to bid. In the same way, the decision whether or not to develop involves balancing costs against rewards: any substantial increase in costs will eliminate some future projects. There is an acute need to resolve these legal questions before it is necessary to make decisions on future activity, and that requires a resolution now.

18. (*Miscellaneous Points.*) There are several miscellaneous points in the various declarations which do not fit within the three major categories of issues which I discuss here. I respond to them below:

(a) (*Lack of State Development.*) The declaration of Dwight E. Sanders, for the State intervenors, is to the effect that the bulk of offshore production has come from state waters rather than Federal. In total, that is true. However, the State has issued no new leases since 1969, and the development he refers to has come from older leases. The State has no current new development ongoing along the coast. Indeed, very recently, the State has denied permission to one company even to install an addi-

tional platform on an existing lease for which support facilities already exist. Mr. Sanders also states that there is no development off any defendant county. He overlooks San Luis Obispo, where there are several projects offshore in Federal waters.

(b) (*San Luis Obispo County Administration Policy Re Support Facilities.*) I do not dispute the statements of Mr. Crawford for San Luis Obispo County concerning the attitude the Administration of that County has taken in the permitting process. However, the ordinance challenged here is not representative of the point of view of the County Administration. It was adopted by initiative brought on by filing of a petition containing the needed number of signatures, and the ordinance appears to represent a different point of view, since a majority of the County Board of Supervisors opposed its adoption.

(c) (*Use of Offshore Storage and Treatment Facilities.*) Defendants assert in effect that my prior statement that the OCS cannot be developed without onshore facilities is inconsistent with past statements that it can be developed with an offshore storage and treatment vessel ("OS&T"). There is not actually an inconsistency. It is possible to develop the oil in a lease without facilities in the immediately adjacent county by using an OS&T (if the deposit is large enough to justify the extra expense) provided that a base is available in another county which is not too far away from which one can ferry men and supplies to operate the platforms and the OS&T. As I point out above, however, it is not possible to develop the gas in that way.

(d) (*Interest in Lease Sales.*) I have been advised of the argument that so many areas have been deleted from the proposed sales that there is much uncertainty as to whether the companies will bid for what remains. The fact is that at an earlier date, proposals were aired and hearings held with respect to a much more limited selection of parcels. That approach was strenuously opposed

by the oil industry. The level of interest shown at hearings was very high. Companies have bid at every sale held thus far offshore of California and there is no realistic possibility that there will be an absence of bidding this time unless these ordinances prevent such bidding.

(e) (*Factors Influencing Bidding.*) I have noted also that Mr. Travis has expressed the opinion in his declaration that political obstacles of the type represented in these ordinances never influence oil companies in their bidding, that the only influence is resource estimates. Since Mr. Travis indicates no experience in the oil industry, I do not know on what he can base his opinion. When I was with one of the companies, it was part of my job to advise the operators who do the bidding of political risks. I will say simply, as ought to be obvious, that oil company bids and operating decisions are based on estimates of potential rewards, risks, and costs of development and production. Bids will vary from company to company because those appraisals are never exactly the same. But because regulation affects costs, it affects the bids. If, as would be the case here, regulation requires use of an OS&T, thus preventing gas sales, that would be highly material. If no support facilities are allowed, so that one has to gamble on whether the political climate would change in order to be allowed to develop at all, that would be highly material. If a referendum is required on top of the normal permitting process, that affects risks and accordingly affects bids.

Executed this 4th day of January, at Los Angeles, California.

/s/ Douglas Henderson
DOUGLAS HENDERSON

[Proof of Service Omitted in Printing]

APPENDIX H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-87-05190-CBM (GHKx)

WESTERN OIL AND GAS ASSOCIATION,
a nonprofit corporation, and
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
SAN DIEGO COUNTY, COUNTY OF SANTA CRUZ,
CITY AND COUNTY OF SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF OCEANSIDE, CITY OF SAN DIEGO,
CITY OF SAN LUIS OBISPO, AND THE CITY OF SANTA CRUZ,
Defendants.

DECLARATION OF DOUGLAS HENDERSON IN SUPPORT OF MOTION OF PLAINTIFFS WESTERN OIL AND GAS ASSOCIATION AND NATIONAL OCEAN INDUSTRIES ASSOCIATION FOR PARTIAL SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT

[Filed Nov. 23, 1987]

Date: January 11, 1988

Time: 10:00 a.m.

Place: Courtroom 11

I, DOUGLAS HENDERSON, hereby declare and state as follows:

1. I am employed by the Western Oil and Gas Association ("WOGA") as Executive Director of the Association. In that capacity, I have the responsibility for overall management of all activities of the Association. The Association acts as a trade association in the six western states for the oil industry. In that connection, a principal area of its work has related to offshore oil and gas development, most particularly including the problems raised by the application of local, statewide and national regulatory structures to the offshore industry. From 1982 to 1986, I was Director of Government Relations for Phillips Petroleum Company's western activities. Phillips Petroleum was the operator and a principal owner of the Lion Rock Unit in the Santa Maria Basin, hereinafter referred to in this declaration. In my capacity as governmental relations director for Phillips, I was closely involved in the development of Phillips' plans for development of that unit and with respect to the various governmental relations problems that appertained. The Lion Rock Unit is immediately adjacent to other offshore property which will also be affected by these rules. Prior to joining Phillips in 1982, I was manager of the Government Lands Department of the American Petroleum Institute in Washington D.C. and before that held various staff positions with the Rocky Mountain Oil and Gas Association. From 1974 to the present date, my work has required me to be familiar with all aspects of oil and gas production operations, and downstream operations, particularly with such operations as relate to the Outer Continental Shelf of the United States and support operations ashore. With respect to the information set forth below as to the number of leases sold, the price paid, and the dates and places of proposed lease sales under the federal government's 5-year leasing plan, these are matters of public record of which I have personal knowledge through my work at

WOGA and before. The facts set forth below as to the completion and storage of particular projects are compiled from information routinely received by me in the course of my duties and is information received from the companies involved in the projects, including my experiences with the prior owner of the Lion Rock Unit project. Except as indicated above, this declaration is made of my own knowledge and I could so testify with respect to the same, if called as a witness in this action.

2. WOGA is the principal trade association of the oil industry in the six western states, including California. Its members conduct in excess of 80% of the production, refining and marketing of petroleum products in this area. A principal part of WOGA's function, over the last thirty years, has included appearances before courts, administrative agencies and legislative bodies in connection with matters of significance to the California oil industry, particularly offshore oil operations. On behalf of the West Coast oil industry, WOGA has provided testimony to congressional committees, has filed written comments with such committees and with the Department of the Interior ("DOI") and other governmental agencies, and in other ways has diligently supported offshore leasing and offshore operations. WOGA has intervened in the following cases in which injunctions were sought against offshore lease sales, and has actively participated in each such case. *California v. Morton*, 404 F.Supp. 26 (C.D. Cal. 1975) *judgment vacated*, 608 F.2d 1247 (9th Cir. 1979) (suit to enjoin Lease Sale 35 off California); *Energy Action Education Foundation v. Andrus*, 631 F.2d 751 (D.C. Cir. 1979) (suit to enjoin Lease Sale 48 off California); *California v. Watt*, Civ. No. 82-2284-CHH (C.D. 1982) (suit to enjoin Lease Sale 68 off California); *California v. Watt*, 683 F.2d 1253 (9th Cir. 1982), *rev'd*, 464 U.S. 312, 104 S.Ct. 769, 78 L.Ed.2d 567 (1984) (suit to enjoin Lease Sale 53 off California); *California v. Watt*, 712 F.2d 584 (D.C. Cir. 1983) (suit to enjoin Lease Sale 73 off California); *Alaska v. An-*

drus, 580 F.2d 465 (D.C. Cir.), *vacated in part on other grounds as moot*, 439 U.S. 922 (1978) (suit to enjoin Lease Sale 39 (Gulf of Alaska)); *North Slope Borough v. Andrus*, 642 F.2d 589 (D.C. Cir. 1980) (suit to enjoin Beaufort Sea Sale (Alaska)). WOGA has also been either the sole plaintiff or a principal plaintiffs in several cases involving regulations, statutes or ordinances of significance to the oil industry, including *American Petroleum Institute v. Knecht*, 609 F.2d 1306 (9th Cir. 1979) (Coastal Zone Management Act) and *Western Oil and Gas Association v. Byrne*, No. 82-5034 (C.D. Cal. 1985) (Marine Research, Protection and Sanctuaries Act). In general, WOGA has served as the principal organization through which regulations, ordinances and statutes of importance to the industry on the West Coast have been reviewed or litigated. In this way, the need for filing a multiplicity of cases on behalf of individual companies has largely been avoided.

3. Offshore oil and gas development takes place in two geographic areas. There is, first, the area extending from the shore to the three-mile limit, which belongs to the states. Off of California, leases for state operation were offered until 1969. There have been no new state leases offered since 1969, and essentially no new operations have been permitted under existing state leases. Operations under state leases require support facilities onshore, just as do operations or the OCS, all in ways to be detailed below. However, essentially all operations on state leases are supported by facilities which have long since been built.

4. Second, but most importantly, oil and gas production operations offshore of the coast of California also occur in the waters beyond the three-mile limit. All such operations take place on leases issued by the federal government under the Outer Continental Shelf Lands Act ("OCSLA"). Currently, such operations exist on already-issued leases off Los Angeles, Santa Barbara, Orange, Ventura and San Luis Obispo Counties.

5. Development of the OCS involves a series of steps carried out by the responsible oil companies and by the DOI, with input by affected localities, the governors of adjoining states and other interested parties. These steps are as follows:

(a) An early step is the issuance of permits by the Mineral Management Service ("MMS") for geophysical exploration of areas considered promising. Geophysical exploration involves the traversing of extended areas by vessels containing sound-generating equipment, together with electronic equipment for the retrieval of echoes of the sounds generated from layers of sediment beneath the bottom of the ocean. The electronic information generated is used by the companies which conduct or fund the exploration to form a picture of the substructure, which is of value in locating geological formations which have the potential to contain oil (and which may or may not in fact contain oil). Such exploration has been conducted in the areas offshore of defendant counties at a cost to WOGA member companies of many millions of dollars.

(b) The first step toward actual development is the preparation and publication of a five-year schedule for leasing. Prior to the preparation of such a schedule, the DOI identifies areas which may have a potential for oil exploration. The schedule itself identifies areas for potential leasing. The publication of the draft schedule, known as an OCS Five-Year Leasing Plan, is followed by the receipt of public comments. It involves publication of an environmental impact statement and sets a general pattern for the development of the nation's coasts. The last Five-Year Plan for the California coast was approved by Congress on June 26, 1987, and is now in effect. It includes sales in basins in the OCS in areas offshore of defendant counties.

(c) The next step involves the receipt by DOI of nominations for inclusion of specific tracts in a sale by

companies which may be interested in bidding on particular areas. A list of potential areas considered for the sale is then published. Public comment, including state and local comment, is received. As required by the OCSLA, there is again a process of consultation with local authorities and with the state governor's office. That, in turn, leads ultimately to the selection of tracts to be offered for lease. Prior to that time, an environmental impact statement is prepared, which evaluates the specific tracts considered for leasing from both an environmental and economic perspective.

(d) Once the tracts are selected, the lease sale itself is noticed. The sale is on the basis of competitive bids by various companies which may be interested. The DOI reviews the bids received and, assuming that the highest bid received is considered to be high enough for a particular tract, the leases are awarded. As noted above, leases already have been awarded for areas off Los Angeles, Santa Barbara and San Luis Obispo Counties. Areas off San Diego County and off northern California generally, including Sonoma County, the City and County of San Francisco, Santa Cruz County and Monterey County, have been identified as having potential for "wildcat exploration" in that the offshore areas contain structures which have potential for oil and gas. Attached as Exhibit A to this declaration is a true and correct copy of the current MMS Proposed Final 5-Year Leasing Program showing the schedule of planned sales, which is now final. Attached as Exhibit B to this declaration is a map showing the locations of the areas off northern and southern California within the proposed plan. The areas embraced are such that support facilities ashore in each of the defendant counties would be needed. The prohibitions in the challenged ordinances threaten to make impossible development within each of these areas.

(e) Once oil and gas has been discovered in a particular tract, production facilities must be installed on the lease. Normally these facilities will consist of oil

wells located on a platform. The platforms and annexed facilities, under conditions found offshore California, are normally placed in several hundred feet of water and are substantial constructions costing many millions of dollars.

(f) Next, it is normally necessary that the oil and gas be transported to treatment facilities on the shore. Impurities are removed from the oil and water, which is produced along with the oil. Similarly, impurities are removed onshore from the natural gas produced from such wells. The gas is then usually sold to a public utility in the vicinity and enters the general utility supply system, where the gas is sent by pipeline throughout the state to serve the needs of residential and commercial users. The oil processed ashore is then normally placed on board tank vessels and transported to refineries which may be either in the San Francisco Bay area, in the Los Angeles area or outside the state. Alternatively, the oil is placed in pipelines and transported to a refinery for further processing into gasoline, various intermediate oils and fuel oil. In all instances, the gas must be brought ashore in the general vicinity of the offshore wells if it is to enter the stream of commerce. There is one instance along the coast of California where, because of difficulties in coming ashore, the oil is processed in an "offshore storage and treatment vessel" and from that vessel placed into tank ships which take the oil for ultimate refining in Texas. Use of that expedient, however, has been strenuously opposed by the state of California and by various local governments, and these authorities have generally succeeded in prohibiting use of offshore storage and treatment vessels in recent lease sales. Therefore, if offshore development is to go forward, processing facilities must be located ashore within a reasonably short distance of the shoreline nearest to the offshore wells. Under these circumstances, an effective prohibition of the installation of such onshore facilities is an effective prohibition of offshore operations.

6. WOGA's membership includes the majority of the companies which have in the past bid on state and federal leases offshore of California, and the companies which have been awarded such leases. These companies hold leases in all currently active areas, including areas off of San Luis Obispo County, which would be affected by the challenged ordinances. Application of those ordinances already has commenced and is presently adding substantially to the problems of operators in the Santa Maria Basin, which is offshore of San Luis Obispo County and reaches both north and south of that county. According to the MMS, there are already issued and outstanding to WOGA member companies 50 active leases in that basin embracing some 270,000 acres. For those leases, WOGA member companies paid a total of approximately $2.4 billion.

7. Exploration and development of the Santa Maria Basin is at various stages in particular locations. Major discoveries have been made, however, and it is certain that with respect to each such discovery, applications will be made for onshore support facilities in San Luis Obispo County and/or in neighboring counties. Because San Luis Obispo County and the neighboring county of Monterey, as well as various cities within those counties, have in effect ordinances requiring an election prior to the permitting of such onshore support facilities, WOGA member companies will be faced with substantial expenses stemming from the additional time required to go through the election procedure.

8. The farthest-advanced project is on Lease no. OCSP-0409, which is jointly owned by four WOGA member companies. The platform for that project has already been constructed at a cost of approximately $160 million and is currently in storage ashore awaiting installation after San Luis Obispo County issues permits for related onshore facilities. The expense of installing the platform will not be incurred until necessary permits are issued for

the construction of a treatment plant and other facilities required to receive the oil from the platform. The county presently is processing the permits for those facilities, but has informed the WOGA member companies that, pursuant to the county's ordinance, a vote of the electorate will be required to allow issuance of the permits. The addition of an election requirement, in addition to the time required for permitting, involves an additional delay in permit issuance from six months to a year, depending on when an election may be scheduled. The cost to the companies for storage of the platform and loss of use of the funds invested is approximately $16 million a year. In the event that the county's voters refuse permission for the onshore support facilities, the only way to operate the platform would be to design and equip an offshore storage and treatment vessel which would operate in federal waters to receive the oil and treat it (by removing produced water and other impurities) and to design and to construct adjacent facilities for mooring and loading tankers. The additional costs of acquiring or dedicating such a vessel, equipping it and constructing mooring and loading facilities would be substantial. There would be an additional delay of from two to four years for the design, construction and installation of these facilities. And, unless crew and supply boats are allowed to operate from coastal ports, helicopters from local pads and other onshore facilities allowed ashore, it will not even be possible to operate these offshore facilities.

9. In the immediate vicinity is a group of leases as the Lion Rock Unit, also offshore of San Luis Obispo County. This single operating unit comprises 5½ active leases and approximately 31,000 acres. Discoveries have been made on that Unit and its development is expected to follow. WOGA's member companies will have the same permitting problems as have already been experienced with the project on Lease no. OCSP-0409. The impact of

the challenged ordinances is therefore immediate, present and current, and will continue as other projects follow.

10. The restrictions in the challenged ordinances operate in other ways. Of necessity, supplies and manpower must come to an offshore site by boat or helicopter. Those services are most commonly provided from areas as close as possible to the offshore site but for various reasons may be based at locations some distance away. The effect of the San Luis Obispo City and County ordinances, the Morro Bay ordinance and the Monterey County ordinance is to make unavailable the logistical bases closest to the current activity in the Santa Maria Basin. The effect of the other challenged ordinances is to eliminate a large percentage of alternative support sites.

12. The Five-Year Plan for federal leasing, approved by the Department and by Congress, provides for lease sales offshore of Southern California, including San Diego County, in 1989 and offshore of Northern California in 1990. The process of evaluating the potential of all these areas of these counties, as described in Paragraph 5 above, is an ongoing one. The process costs many millions of dollars. WOGA's member companies must have an answer to the validity of these ordinances in order to rationally bid on the leases. If treatment facilities cannot be constructed onshore, at the least, costs of development will be vastly higher and in some instances prohibitive. Necessarily, the leasse will be worth less. If no support activities can be carried on ashore, the leases could not be operated. This is a question which urgently needs resolution. The answer cannot await exploration, discovery and permit application without very large financial losses to the bidder. And, the challenged ordinances complicate the bidding process to a point verging on impossibility. There is literally no way to put a value on the probability of obtaining, or failing to obtain, a satisfactory vote in a referendum on onshore support facilities, a process which inherently operates without

standards. In addition, WOGA's members are currently operating within the ambit of the challenged ordinances. The San Diego County ordinance forbids pipelines and other support facilities for oil and gas produced offshore within 100 miles of the San Diego border. Offshore operations off Orange and Los Angeels Counties conducted by WOGA's members are within that zone. Gas produced from those leases passes into the general utility network of the state, which includes defendants San Diego County, the City of San Diego and the City of Oceanside. If in fact it would be impossible to bring oil ashore from areas off San Diego County, projects offshore of that county will be less desirable than those elsewhere. The question whether each of these ordinances is valid will be precisely the same, whether decided now or later. Because of the ongoing current process and the delays inherent in the process, a ruling on these questions is needed now.

13. Under the OCSLA, it is the responsibility of the DOI diligently to develop the offshore resources of the United States. A variety of government publications report that excessive dependence on imports threatens the United States with excessive foreign exchange losses and a danger of severe dislocations of supply in the event of disruptions elsewhere in the world. For example, in the MMS Five-Year Leasing Program report, Exhibit A hereto, one of those reports notes that if the United States did not import some $38 billion in crude oil and petroleum products in 1986, our balance of trade deficit could have been reduced by approximately 22 percent. Exhibit A hereto, p. 11. The same publication notes the importance of offshore oil and gas as to the security of energy supply, a vital part of national security. It is therefore a matter of important national policy that offshore resources be developed. Because of the nature of the process of oil and gas development in the OCS, the ordinances which are embraced in this lawsuit present severe threats to such development.

14. These ordinances demonstrate on their face a coordinated effort to prevent offshore development. Attached hereto as Exhibits C and D are newspaper articles which show that intention. For example, the text of the ordinances of Monterey County and Santa Cruz County contain provisions which are essentially identical. Several of them contain provisions calling for a coordinated effort to prevent the development, notably, of the coast of Northern California and the San Diego coast.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 23, 1987, at Los Angeles, California.

/s/ Douglas Henderson
DOUGLAS HENDERSON

[Exhibits and Proof of Service Omitted in Printing]

APPENDIX I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 87-05190 CBM (GHKx)

WESTERN OIL AND GAS ASSOCIATION,
a nonprofit corporation, and
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
a nonprofit corporation,
Plaintiffs,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
SAN DIEGO COUNTY, COUNTY OF SANTA CRUZ,
CITY AND COUNTY OF SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF OCEANSIDE, CITY OF SAN DIEGO,
CITY OF SAN LUIS OBISPO, AND THE CITY OF SANTA CRUZ,
Defendants.

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

[Filed Nov. 3, 1987]

Plaintiffs complain of defendants and allege as follows:

JURISDICTION AND PARTIES

1. (*Jurisdiction and Venue.*) This action for declaratory and injunctive relief is founded on violations of the Supremacy Clause [U.S. Const. Art. VI, Sec. 2]; the Commerce Clause [U.S. Const. Art. I, Sec. 8, Para. 3];

the Due Process Clause [U.S. Const. Fourteenth Amendment]; the Outer Continental Shelf Lands Act [43 U.S.C. §§ 1331 *et seq.*]; the Federal Coastal Zone Management Act of 1976 [16 U.S.C. §§ 1451 *et seq.*]; the Federal Vessel Documentation Act [46 U.S.C. §§ 12105-106]; the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act [33 U.S.C. §§ 1221 *et seq.*; 46 U.S.C. §§ 3701 *et seq.*]. Jurisdiction is vested in this Court under 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution and laws of the United States and under 43 U.S.C. § 1349 (Outer Continental Shelf Lands Act) in that this is a controversy arising by reason of operations on the Outer Continental Shelf of the United States, and in that the Central District is one of the districts in which one of the defendants resides. This district is the appropriate venue to bring the action since defendants San Luis Obispo County, City of San Luis Obispo and City of Morro Bay have their residence within said district and this is one of the districts in which the controversy arises.

2. (*Plaintiffs.*) Plaintiff Western Oil and Gas Association ("WOGA") is a nonprofit industry trade association with its principal office in Los Angeles, California. Its members conduct much of the producing, refining and marketing of petroleum and petroleum products in the western United States and substantially all operations off the coast of California for the exploration and production of oil and gas. Plaintiff National Ocean Industries Association ("NOIA") is a nonprofit trade association representing over 325 companies located throughout the country, including in the State of California, that provide necessary services, supplies and support for all phases of offshore oil and gas exploration and development. NOIA's member companies perform most of the actual work involved in resource development on the Outer Continental Shelf, including geophysical activities and exploratory drilling, and the onshore support for such activities.

3. (*Defendants.*) Defendants are bodies corporate and politic organized pursuant to the Constitution and laws of the State of California and exercising local governmental authority. Defendants are Sonoma County, San Mateo County, Monterey County, San Luis Obispo County, San Diego County, County of Santa Cruz, City and County of San Francisco, City of Monterey, City of Morro Bay, City of Oceanside, City of San Diego, City of San Luis Obispo, and City of Santa Cruz.

NATURE OF THE CONTROVERSY

(National Policy To Reduce Dependence On Foreign Oil Supplies)

4. Congress has stated in the Outer Continental Shelf Lands Act that:

> "It is hereby declared to be the policy of the United States that:
>
> * * * *
>
> (3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs . . . .'
>
> [43 U.S.C. § 1332(3)].

5. A large portion of the petroleum used in the United States is produced by foreign countries and imported into the United States. Excessive dependence on such sources threatens the security of the United States, and is responsible for a large portion of the present negative balance of trade, with resultant serious adverse economic consequences. It is the announced policy of both the Executive and Legislative Branches of the Federal Government to reduce American dependence on foreign oil by expanding

supplies through domestic oil and natural gas exploration and production.

(Significance Of Oil Production On Outer Continental Shelf Adjacent to California)

6. The Secretary of the Interior has granted to members of plaintiffs WOGA a number of leases for oil and gas exploration and production on the Outer Continental Shelf adjacent to California.

7. An estimated 72,000 barrels of oil and 158,994 million cubic feet ("mcf") of natural gas are being produced on a daily basis from the Outer Continental Shelf adjacent to California.

8. Estimated future daily production from new projects now being processed on the Outer Continental Shelf adjacent to California is between 300,000 and 400,000 barrels of oil and 500,000 to 700,000 mcf of natural gas.

9. Substantial additional properties on the Outer Continental Shelf adjacent to California have not yet been leased for oil exploration or, if leased, have not yet been fully explored. The United States Department of Energy in its March, 1987 report to the President on Energy (page 56) estimated that about 4 *billion* barrels of recoverable undiscovered oil resources are estimated to be off the California coast. It is also estimated that there is up to 5.10 *trillion* cubic feet of undiscovered, economically recoverable natural gas reserves on the Outer Continental Shelf adjacent to California.

(Necessity For Onshore Facilities In California For Transportation And Processing Of Outer Continental Shelf Oil)

10. The expeditious and orderly development of full production of Outer Continental Shelf oil and gas depends upon the availability of various onshore facilities in California, including tanker terminals, pipelines, storage

tanks, offices, warehouses and processing units. The unavailability of such necessary onshore facilities in California would significantly curtail the development, production, and interstate transport of Outer Continental Shelf oil and gas.

(Local California Ordinances Absolutely Prohibit Construction Of Onshore Facilities Or Make Such Construction Dependent On Voter Approval)

11. Local ordinances have been passed by defendants Sonoma County, San Mateo County, Monterey County, San Luis Obispo County, San Diego County, County of Santa Cruz, City and County of San Francisco, City of Monterey, City of Morro Bay, City of Oceanside, City of San Diego, City of San Luis Obispo, and the City of Santa Cruz. These ordinances have already been lodged with the Court under separate cover, and as Exhibits A through M to the original Compaint filed in this action. All of the ordinances except those discussed in the next two sentences prohibit or substantially restrict the development of onshore facilities to service offshore oil and gas development by making the construction of such facilities dependent upon the approval of the local voters. The ordinances passed by San Mateo and San Diego Counties, the City of San Diego and the City of Oceanside absolutely restrict or prohibit development of such onshore facilities. The ordinance of the City and County of San Francisco imposes a two-year moratorium on such facilities.

12. These ordinances vary in their wording but all make it clear that their purpose is to prevent or restrict offshore oil and gas development approved by the state or federal governments or both. For example, the ordinance passed by the City of San Luis Obispo provides in part:

"17.92.010 Onshore Support Facilities

A. There is a strong likelihood that serious adverse effects will result from onshore processing, stor-

age, or related service facilities supporting offshore oil and gas development authorized by the federal and state governments.

B. Such facilities would threaten the community's vital economy and environmental quality.

17.92.020 Onshore Support Facilities Prohibited.

No onshore support facility for offshore oil or gas development shall be allowed or permitted within the City of San Luis Obispo . . . . For the purpose of this ordinance, the term 'onshore support facility' means any activity or land use required to support directly the exploration, development, production, storage, processing, transportation, or related aspects of offshore energy resource extraction."

13. The ordinance passed by Santa Cruz County provides in part:

"*SECTION 16.55.010 FINDINGS.* It is hereby found and determined as follows:

* * * *

6. The citizens of Santa Cruz County have no legal way directly to control offshore oil and gas exploration or development, since oil and gas developments which occur offshore are under the jurisdiction of the federal government. The citizens of Santa Cruz County do, however, have the legal ability to make significant decisions about onshore facilities which support offshore oil and gas exploration and development."

14. All of these ordinances make it clear that their intended effect is to limit offshore activities over which the local governments have no jurisdiction and to do so through preventing the flow of oil and gas from the Outer Continental Shelf into and through interstate commerce.

All the offshore oil development and production on the Outer Continental Shelf is beyond the jurisdiction of the state of California and of the local communities and is subject to exclusive federal jurisdiction.

15. Other restrictions on onshore activities affecting significant Outer Continental Shelf oil and gas imports are being imposed by the County of Santa Barbara. Because of differences in substance, these restrictions are not included in these proceedings.

Adverse Effect Of Restrictive Ordinances On Development of OCS Oil and Gas

16. These restrictive ordinances apply to the greater part of the California coastline from the Mexican border to Northern California. They have the collective effect of severely restricting the ability of the United States to develop Outer Continental Shelf resources and of limiting interstate commerce in these resources. The ordinances here challenged collectively constitute a virtually continuous wall effectively excluding transportation of Outer Continental Shelf oil into much of the State and preventing onshore processing of such oil.

17. The ordinances cause immediate harm to plaintiffs' member companies and destroy the substantial rights of those member companies and others to bid on Outer Continental Shelf leases offered for sale as follows:

a. *Santa Maria Basin—Initial Development*: Several of plaintiffs' member companies presently own the initial discovery leases in the Santa Maria Basin off San Luis Obispo County on which upwards of $200 million dollars has been expended by those companies for purchase, exploration and development. Development thereof requires the construction of pipelines from the Outer Continental Shelf into San Luis Obispo County and the use of ports and locations in the county for facilities to support the OCS development, including port facilities and the City of

Morro Bay. Applications for permits for onshore facilities related to the platform for this development are already on file with the County of San Luis Obispo. The County has advised that such applications are subject to the ordinance in effect in the County and that the permit applications are subject to a vote of the County'st elecorate. The platform in question already has been constructed at a cost of some $160 million and is currently in storage ashore awaiting installation after permitting. The requirement for a referendum places this project at risk and causes present harm to plaintiffs' member companies. However the referendum turns out, the delays associated with a vote will add from six months to one year's delay to the project. The added costs from delay are in excess of $14 million per year in storage and preservation of the platform and the loss of use of the investment. In addition, an unknown but substantial amount will be required to be expended prior to the election to inform the County's voters of the merits of the project. Oil and natural gas projects located ashore, or, indeed, any other type of development projects located ashore, are not subject to such delays and costs.

b. *Other Santa Maria Developments*: There are at least five additional projects involving a number of leases owned by plaintiffs' member companies on which additional discoveries have been made, development of which is following behind the initial project described above. Additional millions of dollars have been expended for purchase, exploration and development of said leases. Development of these areas will follow that of the initial project and that development is threatened with jeopardy and injury in the same fashion as the initial Santa Maria project.

c. *Interference With the Right to Bid on OCS Leases*: The Department of the Interior has programmed three Outer Continental Shelf lease sales off the California coast in 1989 for areas off Northern and Southern California

and in 1990 for areas off Central California. The area covered by the lease sales includes areas off the boundaries of defendants. Various of plaintiffs' member companies have bid on Outer Continental Shelf oil and gas leases in the past and, as potential bidders, are interested in the sales to be conducted in the next few years. The right to bid for leases at those sales is a substantial right which may not be lawfully interfered with and which is protected by the Constitution and laws of the United States and by federal common law. The challenged ordinances threaten to destroy the integrity of the bidding process to the injury of plaintiffs' member companies by unlawfully restricting the placement of necessary onshore support faicilities. If local governments effectively prohibit support facilities for adjacent OCS exploration and development, such leases will either be totally valueless or, in a few cases, of substantially less value. Moreover, additional millions of dollars have been spent by plaintiffs' member companies in preparation for bidding and in the accumulation of geological and geophysical information and analysis, which monies will be lost if the invalidity of the challenged ordinances is not established. Plaintiffs' member companies are faced with the alternative of not bidding on the tracts being leased, thus losing the monies already spent on the pre-bidding process or of spending substantial additional funds in leases and exploration activities only to learn that the onshore facilities necessary to develop the leases cannot be built. Moreover, unless the invalidity of the challenged ordinances is determined now, plaintiffs' member companies face enormous added costs for delay if the validity of the ordinances must be determined after the denial of permit applications. Finally, plaintiffs' member companies are dependent upon the preservation of a significant domestic supply of oil and natural gas. That supply is especially vital, given the uncertainties attached to other sources, to the preservation of their businesses. The challenged ordinances threaten that supply.

18. The ability to conduct individual land uses dependant upon approval by a local electorate necessarily depends on popularity. That process deprives OCS lease owners of property without the due process assurance provided by application of rational and objective criteria in suitable administrative proceedings, with subsequent judicial review.

19. A present controversy exists between plaintiffs, on the one hand, and defendants, on the other, in which plaintiffs assert that the ordinances challenged by this action are invalid and defendants assert that said ordinances are valid. A judicial declaration as to the validity of the challenged ordinances is therefore appropriate.

FIRST CLAIM

(Violation Of Supremacy Clause By Frustrating Congressional Purpose For Offshore Oil Development Under The Outer Continental Shelf Lands Act)

20. By this reference, plaintiffs incorporate as though fully set forth herein the allegations in paragraphs 1 through 19 hereinabove.

21. It is the policy of the Federal Government, as expressed in the Outer Continental Shelf Lands Act ("OCSLA"), to have an "expeditious and orderly" development of oil reserves on the Outer Continental Shelf, subject to environmental safeguards. The OCSLA provides for the leasing, through the competitive bidding process, of oil and gas tracts on the Outer Continental Shelf. The ordinances here challenged interfere with and frustrate the Congressional intent for expeditious and orderly development and production of oil on the Outer Continental Shelf. The ordinances also violate the substantial right of plaintiffs' member companies to engage in the competitive bidding process for offshore energy leases provided for by the OCSLA.

22. The OCSLA expressly recognizes that onshore facilities will be needed for offshore development and provides a mechanism for consideration of problems related thereto in the course of the review of offshore projects, as follows:

(a) "[S]ince exploration, development, and production of the minerals on the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and other affected States, and in recognition of the national interest in the effective management of the marine, coastal, and human environments . . . such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with national interest, in the policy and planning decisions made by the Federal Government relating to the exploration for, and development and production of, minerals of the outer Continental Shelf." [43 U.S.C. § 1332(4)(B)].

(b) "[T]he rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized . . . ." [43 U.S.C. § 1332(5)].

(c) Prior to development and production of Outer Continental Shelf Oil, a proposed plan must be submitted to the Federal Government "accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and opera-

tions, and all environmental and safety safeguards to be implemented." [43 U.S.C. § 1351(a)(1)-(2)].

(d) Such plans and accompanying statements are to be submitted "to the Governor of any affected State, and, upon request, to the executive of any affected local government . . . ." [43 U.S.C. § 1351(a)(3)(A)].

(e) Whether or not approval of such plans is within the scope of the National Environmental Policy Act of 1969, state and local governments are entitled to offer comments. [43 U.S.C. § 1351(f) and (g)].

(f) After receiving state and local comments, the responsibility for approving plans for development and production of oil from the Outer Continental Shelf is specifically reserved to the United States Secretary of Interior. [43 U.S.C. § 1351(h)]. In the adoption of the OCSLA, the alternative of giving state or local authorities a veto over Outer Continental Shelf facilities was considered and rejected by Congress. The ordinances challenged herein are invalid as attempting to exercise such a veto or as purporting to give such authority to the local electorate.

23. Accordingly, the ordinances here challenged violate the Supremacy Clause [Art. VI, Sec. 2] of the United States Constitution.

SECOND CLAIM

(*Violation Of Supremacy Clause—Coastal Management*)

24. By this reference, plaintiffs incorporate as though fully set forth herein the allegations in paragraphs 1 through 19 hereinabove.

25. When adopting the Coastal Zone Management Act, Congress found that:

(a) "There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone" [16 U.S.C. § 1451(a)]; and

(b) "New and expanding demands for . . . energy . . . activities . . . in the . . . Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters." [16 U.S.C. § 1451(f)].

26. Having so found, Congress in that Act declared the national policy to be to assist states with development and implementation of coastal zone management programs to assure "priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to . . . energy . . . ." [16 U.S.C. § 1452(2)(C)].

27. The State of California has developed and implemented such a plan approved by the Federal Secretary of Commerce on November 7, 1977 [pursuant to 16 U.S.C. §§ 1455-56], providing that:

(a) Needed onshore energy facilities may be required to be located within the coastal zone. [California Public Resources Code §§ 30001(d); 30001.2; 30001.5];

(b) Persons wishing to develop oil production facilities within the coastal zone in California must obtain a coastal development permit from the State Coastal Commission [California Public Resources Code § 30601]; and

(c) Decisions on such permit applications are subject to judicial review. [California Public Resources Code § 30801].

28. The Federal Coastal Zone Management Act requires persons submitting plans for development and production of Outer Continental Shelf oil to certify that their plans meet the requirements of the adjacent state's coastal management program and will be carried out in a manner consistent with that program. [16 U.S.C. § 1456(c)(3)(B)].

29. Parties wishing to construct production facilities for Outer Continental Shelf oil located within the California Coastal Zone are allowed to construct them only if their the California Coastal Commission concurs with the above-mentioned consistency certification [16 U.S.C. § 1456(c)(3)(B)(i)-(ii)] or the Secretary of Commerce overrides any state disapproval. [16 U.S.C. § 1456(c)(3)(B)(iii)].

30. The adoption and enforcement of the challenged local ordinances violates the California coastal plan as embodied in the aforesaid California statutes, as approved by the Secretary of Commerce. Such plan may be modified in these respects only by the California Legislature with the approval of the Secretary of Commerce. No such approval has been obtained.

31. The ordinances here challenged therefore violate the Supremacy Clause [Art. VI, Sec. 2] of the United States Constitution in that they violate the approved California coastal plan.

THIRD CLAIM

(Violation Of Supremacy Clause By Frustrating The Congressional Purpose In Delegating To The United States Coast Guard Responsibility For Licensing Of Vessels Under The Federal Vessel Documentation Act)

32. By this reference, plaintiffs incorporate as though fully set forth herein the allegations in paragraphs 1 through 19 hereinabove.

33. Under the Federal Vessel Documentation Act, Congress has delegated to the United States Coast Guard the responsibility for issuing registries and licenses for coastwise trade to vessels meeting statutory requirements for eligibility. [46 U.S.C. §§ 12105 and 12106].

34. Under that Act, Congress further provided that "[s]ubject to the laws of the United States regulating the coastwise trade . . . a vessel for which a coastwise license

or an appropriately endorsed registry is issued may be employed in the coastwise trade . . . ." [46 U.S.C. § 12106(b)(1)].

35. Vessels holding registries or licenses for coastwise trade have a federally granted right to conduct the trade allowed by their registries or licenses.

36. The ordinances here challenged deny federally registered or licensed vessels their right to call upon significant coastal areas in California by either:

(a) Absolutely prohibiting construction of terminal facilities necessary for entry of such vessels transporting oil recovered from the Outer Continental Shelf; or

(b) Conditioning the construction of terminal facilities necessary for entry of such vessels transporting oil recovered from the Outer Continental Shelf upon the approval of terminal facilities by the local electorate.

37. Accordingly, the ordinances here challenged violate the Supremacy Clause [Art. VI, Sec. 2] of the United States Constitution by frustrating and interfering with accomplishment of the Congressional purpose in delegating to the United States Coast Guard the responsibility to grant the federal right to conduct coastal trade in California to vessels transporting oil recovered from the Outer Continental Shelf.

FOURTH CLAIM

(Violaiton Of Supremacy Clause By Frustrating The Congressional Purpose In Delegating To The United States Coastal Guard Responsibility For Certification Of Petroleum Tanker Safety Procedures and Specification of Port Safety Procedures Under The Federal Ports And Waterways Safety Act, As Amended By The Port And Tanker Safety Act).

38. By this reference, plaintiffs incorporate as though fully set forth herein the allegations in paragraph 1 through 19 hereinabove.

39. In the Ports and Waterways Safety Act Congress declared:

(a) "[T]hat navigation and vessel safety and protection of the marine environment are matters of major national importance" [33 U.S.C. § 1221(a)]; and

(b) "[T]hat increased supervision of vessel and port operations is necessary in order to . . . prevent damage to structures in, on, or immediately adjacent to the navigable waters of the United States . . . ." [33 U.S.C. § 1221(c)(2)].

40. Having so declared, Congress specified the criteria for determining whether petroleum tankers will be permitted to enter ports in the United States. [33 U.S.C. § 1228].

41. Included among those criteria is a requirement that such tankers comply with minimum standards set forth in the Port and Tanker Safety Act [46 U.S.C. §§ 3704 *et seq.*], as well as regulations promulgated by the Coast Guard under that Act. [46 U.S.C. § 3703].

42. Congress also authorized the Coast Guard under the Ports and Waterways Safety Act to "take such action as is necessary to prevent damage to . . . any land structure or shore area immediately adjacent to such [navigable] waters [of the United States]." [33 U.S.C. § 1225(a)(1)].

43. The effect of said statute, and of other comprehensive federal legislation regulating vessel safety, is to preempt the ordinances here challenged. Those ordinances, therefore, violate the Supremacy Clause [Art. IV, Sec. 2] of the United States Constitution.

FIFTH CLAIM

(Violation Of Due Process By Subjecting Permit Applications To The Electorate)

44. By this reference, plaintiffs incorporate as though fully set forth herein the allegations in paragraph 1 through 19 hereinabove.

45. Those ordinances here challenged which condition the granting of land-use permits for oil and gas transportation and processing facilities upon a case-by-case approval by local voters violate the Due Process Clause of the Fourteenth Amnedment to the United States Constitution by depriving individual Outer Continental Shelf leaseholders and permit applicants of their rights without the application of objective criteria in a suitable hearing, subject to judicial review.

SIXTH CLAIM

(Violation Of Commerce Clause By Impermissible Direct Regulation Of Interstate Commerce)

46. By this reference, plaintiffs incorporate as though fully set forth herein the allegations in paragraphs 1 through 19 hereinabove.

47. By both their announced purpose and their practical effect, the ordinances here challenged constitute a direct, local regulation or prohibition of the flow of petroleum in interstate commerce in violation of the Commerce Clause [Article I, Section 8] of the United States Constitution.

SEVENTH CLAIM

(Violation Of Commerce Clause By Discrimination Against Interstate Commerce)

48. By this reference, plaintiffs incorporate as though set forth fully herein the allegations in paragraphs 1 through 19 hereinabove.

49. Facilities constructed for the production of crude oil and gas extracted from onshore wells within the boundaries of California are neither prohibited nor conditioned upon voter ratification by the ordinances challenged herein. By subjecting only facilities for the production of offshore, including interstate crude oil and gas from federal territory on the Outer Continental

Shelf, to either prohibitions or to electoral approval requirements for issuance of permits, the ordinances challenged herein discriminate against interstate commerce in violation of the Commerce Clause [Article I, Section 8] of the United States Constitution.

EIGHTH CLAIM

(Violation Of Commerce Clause By Imposing Undue Burden On Interstate Commerce)

50. By this reference, plaintiffs incorporate as though set forth fully herein the allegations in paragraphs 1 through 19 hereinabove.

51. Each ordinance here challenged effectively prohibiting importation of Outer Continental Shelf oil and gas into California constitutes an unreasonable burden on interstate commerce in violation of the Commerce Clause [Article I, Section 8] of the United States Constitution. Also, the ordinances challenged herein which require parties considering action to develop petroleum resources on the Outer Continental Shelf to succeed in a general election as a pre-condition to receiving permits for necessary onshore transportation and processing facilities imposes an unreasonable burden on interstate commerce, in violation of the Commerce Clause [Article I, Section 8] of the United States Constitution, by:

(a) Significantly delaying the time in which such permits could be obtained;

(b) Significantly increasing the cost of obtaining such permits by requiring the waging of an election campaign;

(c) Creating substantial uncertainty about whether such permits may be arbitrarily denied; and

(d) Effectively denying meaningful judicial review of any such permit denial by virtue of the absence of both rational criteria for permit consideration and an evidentiary record suitable for such review.

NINTH CLAIM

(Violation Of Commerce, Due Process and Supremacy Clauses By Extraterritorial Regulation of Outer Continental Shelf Oil Development)

52. By this reference, plaintiffs incorporate as though set forth fully herein the allegations in paragraphs 1 through 19 hereinabove.

53. By both their announced purpose and their practical effect, the ordinances here challenged effectively constitute extraterritorial prohibition or regulation of oil development activities within federal territory on the Outer Continental Shelf in violation of the Commerce Clause [Article I, Section 8] and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Supremacy Clause [Article VI, Section 2] of the United States Constitution.

TENTH CLAIM

(Violation Of Due Process, Equal Protection And Commerce Clauses By Irrationally Differentiating Between Permit Applicants Solely On The Basis Of The Location Of The Wells From Which Crude Oil Was Produced)

54. By this reference, plaintiffs incorporate as though set forth fully herein the allegations in paragraphs 1 through 19 hereinabove.

55. The ordinances here challenged neither prohibit nor condition the availability of permits for construction of facilities for production and transportation of oil and gas from land-based wells. However, there is no valid basis for differentiating between crude and gas production and transportation facilities based on whether the oil and gas was pumped from an onshore well or a well on the Outer Continental Shelf. Accordingly, the ordinances here challenged violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and the Commerce

Clause [Article I, Section 8] of the United States Constitution because there is no rational basis for differentiation between oil production permit applicants based on the location of the wells from which their oil was pumped.

WHEREFORE, plaintiffs WESTERN OIL AND GAS ASSOCIATION and NATIONAL OCEAN INDUSTRIES ASSOCIATION hereby pray for:

1. Injunctive relief prohibiting defendants from enforcing those aspects of the ordinances challenged by this Complaint prohibiting construction of onshore facilities for production of Outer Continental Shelf oil and requiring voter approval prior to the construction of such facilities;

2. A judicial declaration that the ordinances challenged herein are unconstitutional under the Supremacy, Due Process, Commerce, and Equal Protection Clauses of the United States Constitution;

3. For costs of suit herein;

4. For reasonable attorneys' fees; and

5. For such additional and further relief as the Court deems proper.

Dated: November 3, 1987.

Respectfully submitted,

PHILIP K. VERLEGER
RICHARD J. DENNEY, JR.
DONNA R. BLACK
DAVID W. BURHENN
MCCUTCHEN, BLACK, VERLEGER & SHEA

/s/ R. J. Denney
RICHARD J. DENNEY, JR.
Attorneys for Plaintiffs
Western Oil and Gas Association and
National Ocean Industries Association

[Proof of Service Omitted in Printing]

APPENDIX J

RESOLUTION NO. 86-1524
DATED: JULY 22, 1986

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, CALLING A REFERENDUM ELECTION CONCERNING A PROPOSED ORDINANCE WHICH WOULD REQUIRE VOTER APPROVAL FOR COASTAL PLAN AMENDMENTS TO ALLOW ON-SHORE FACILITIES SUPPORTING OFF-SHORE OIL AND GAS EXPLORATION AND DEVELOPMENT, AND EXPRESSING THE STRONG OPPOSITION OF THE CITIZENS OF SONOMA COUNTY TO PROPOSED OFF-SHORE OIL DEVELOPMENTS AFFECTING THE SONOMA COUNTY COAST AND THE ENVIRONMENT, CHARACTER AND ECONOMY OF SONOMA COUNTY

WHEREAS, it has been proposed to this Board that an ordinance be submitted to the people of Sonoma County requiring voter approval for coastal plan amendments to allow on-shore facilities supporting off-shore oil and gas exploration and development and expressing strong opposition of the citizens of Sonoma County to proposed off-shore oil developments, which proposed ordinance is in the words and figures following:

ORDINANCE NO. 3592R

ORDINANCE OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, REQUIRING VOTER APPROVAL FOR COASTAL PLAN AMENDMENTS TO ALLOW ON-SHORE FCILITIES SUPPORTING OFF-SHORE OIL AND GAS EXPLORATION AND DEVELOPMENT, AND EXPRESSING THE STRONG OPPOSITION OF THE CITIZENS OF SONOMA COUNTY

TO PROPOSED OFF-SHORE OIL DEVELOPMENTS AFFECTING THE SONOMA COUNTY COAST, AND THE ENVIRONMENT, CHARACTER AND ECONOMY OF SONOMA COUNTY

The People of the County of Sonoma, State of California, do ordain as follows:

SECTION I. The purpose of this ordinance is to express the strong current opposition of the people of Sonoma County to proposed off-shore oil developments which would negatively affect the Sonoma County Coast, the character and environment of the community and the local Sonoma County economy. A further purpose of this ordinance is to provide that proposed amendments to Sonoma County's Certified Local Coastal Program to allow the development, construction or installation of on-shore facilities for or intended to support off-shore oil and gas exploration or development will be approved by the County only after a vote of the people of the County of Sonoma.

SECTION II. The citizens of the County of Sonoma hereby declare their current opposition to off-shore oil developments affecting Sonoma County and the Sonoma County Coast, for the reasons stated in Section III of this Ordinance.

SECTION III. The Sonoma County Code is hereby amended by adding Chapter 30 to read as follows:

Chapter 30, On-Shore Facilities Supporting Off-Shore Oil and Gas Exploration and Development

Section 30-1. Title.

"This chapter shall be known as the On-Shore Oil and Gas Facilities Ordinance of Sonoma County."

Section 30-2. Findings.

It is hereby found and determined as follows:

(a) The Federal Government has proposed to open up virtually the entire California coastline to off-shore oil and gas exploration and development, including the coastline off Sonoma County.

(b) Coastal areas off Sonoma County have been determined to be high priority areas for off-shore oil and gas exploration and development by various multi-national oil companies.

(c) Off-shore oil and gas development off the coast of Sonoma County would have the following significant effects upon the County:

1. If off-shore oil and gas development occurs off the Sonoma County coast, significant new air pollution is inevitable. One drill ship produces approximately the same amount of air pollution as 23,000 cars driving 50 miles per day. Despite this fact, the Federal Government does not presently require that off-shore oil and gas developments comply with state and local air pollution rules.

2. Off-shore oil and gas development would expose the coast to the danger of massive oil spills from an oil well blowout or a tanker accident. Even if a major accident never occurs, routine small oil releases are inevitable if off-shore oil and gas development is permitted. Such releases of oil would degrade the sensitive marine environment, put oil on the beaches and expose both marine mammals and sea birds to great danger.

3. Off-shore oil and gas development off the Sonoma County coast would inevitably result in the discharge of large volumes of highly toxic drilling muds into the ocean floor. These toxic materials would degrade the sensitive marine environment, put all forms of marine life at greater risk, and pose a threat to human beings who may later eat fish contaminated with accumulated toxic material.

4. Off-shore oil and gas development off the Sonoma County coast would put the existing local economy in jeopardy, because: (i) Such development would signficantly and substantially interfere with the operation of the local fishing industry. (ii) Such development would detract from the experience of visitors to the Sonoma County coast and, particularly if a massive oil spill occurs, place the Sonoma County tourism industry in danger. The Sonoma County tourism industry is a major component of the Sonoma County economy which has, in recent years, become even more important. A large number of businesses directly and indirectly catering to visitors to the County are dependent upon tourist dollars for their economic well being. (iii) The recreational use of local port facilities could be usurped by oil industry boats.

5. Noisy helicopter traffic could become a significant irritant to County residents.

6. The massive fresh water supply needed for off-shore oil and gas development might require that water be diverted from existing agricultural, residential and business users, or that costly and environmentally damaging dam and water projects be constructed. The majority of the coastal area of Sonoma County is characterized as a Class IV water scarce area by County water availability maps. The water problem is most acute in the County's largest harbor, Bodega Bay, where a building moratorium is currently in place because of the lack of water.

7. Coastal agriculture and other lands would be needed for oil processing, treatment and transportation facilities, or for supply bases for off-shore oil and gas development, potentially transforming open agricultural and timber lands along the coast into the industrial staging area for oil and gas developments off-shore.

8. The coastal zone is subject to earthquake hazards. The San Andreas Fault runs parallel to the coast coming inland at Bodega Harbor and Fort Ross. Geologic and

historic records indicate that earthquakes have and will occur on this portion of the fault. An earthquake could be accompanied by surface rupture, ground shaking and ground failure. The location of oil and gas support facilities in this geologically unstable area could well result in an environmental disaster.

9. The coastal area is served by State Highway One from Valley Ford to Gualala. Highway One is a two-lane twisting and curving road which is totally unsuitable for the intensity and type of vehicular and truck traffic that would be generated by heavy oil and gas industrial uses. Moreover, the Coastal Plan indicates that traffic congestion is already a problem occuring in Bodega Bay where minor road improvements will not be adequate to relieve the critical capacity deficiencies.

10. The vast majority of the 55 mile coastline is made up of bluffs, coves and promentories which are not suitable for siting oil and gas support facilities. The County's major port, Bodega Bay, has site problems which are set forth in more detail elsewhere herein.

(d) The County of Sonoma produces its fair share of regional energy needs. The Sonoma County Geothermal Resources Management Plan indicates that the development in Sonoma County at the Geysers is the largest producing geothermal field in the world producing approximately 1500 megawatts of electricity annually. This amount of electricity is enough to serve 1.5 million people, far in excess of the current County population of approximately 350,000.

Pacific Gas and Electric estimates that by 1988 the electricity generated at the Geysers will constitute about ten percent (10%) of PG&E's total generating capacity. Both PG&E and Union Oil estimate that by 1990 the Geysers will be producing enough electricity to serve a city of more than 2 million people; by the year 2000, industry officials estimate that the current electrical output can be doubled.

Sonoma County is already an exporter of energy and thus has met and will continue to meet its burden to contribute to the production of area-wide, state and national energy needs. Because of the existing level of this contribution and the fact that the field life of geothermal plants is from 30 to 50 years, the development of the Sonoma County coast for oil and gas production should not be accomplished in the name of regional, state or national energy needs.

(e) Rather than consuming off-shore oil and gas resources now, our nation should conserve these resources, since they are non-renewable. Moreover, the accelerated production and expenditure of hydrocarbon fuels aggravates the global warming trend, a trend which may have long-term adverse impacts on the County as a whole and, in particular, on coastal communities which could be subject to inundation if global oceans continue to rise as a result of polar icecap melting. Our nation should develop a national energy strategy based on energy conservation emphasizing the increasing use of renewable energy sources such as geothermal production and reinjection. Instead, the federal government has presently reduced or eliminated efforts to increase energy conservation and to develop renewable energy sources, at the same time that it is attempting to increase the development of nonrenewable energy sources like off-shore oil and gas. The citizens of Sonoma County are willing and able to do their part in conserving energy and in developing a society less dependent on non-renewable fossil fuel resources.

(f) The citizens of Sonoma County have no way to control off-shore oil and gas exploration or development, since such development occurs off-shore under the jurisdiction of the federal government. The citizens of Sonoma County do, however, have the ability to make decisions about the propriety of amending the County's Certified Local Coastal Program for the purpose of developing onshore facilities which support off-shore oil and gas ex-

ploration. Due to the dramatic impacts of such on-shore developments on the character, economy and environment of Sonoma County, it is crucial that the people of Sonoma County reserve to themselves, to the maximum degree possible, the authority to approve the nature, extent and location of such development. When balanced against the dramatic impacts of such development, the referendum process is reasonably calculated to address local concerns while not unduly interfering with federal and state energy objectives. This is especially true in light of the local override procedure set forth in section 30515 of the Coastal Act.

Section 30-3. Voter Approval for On-Shore Facilities.

(a) When any person proposes to undertake the development within Sonoma County of any on-shore energy facility relating to the exploration or development of off-shore oil or gas resources and requests an amendment of the County's Certified Local Coastal Program to facilitate such development, a determination by the Board of Supervisors pursuant to Public Resources Code section 30515 that the proposed amendment is in conformity with the policies of the Coastal Act and that the Certified Local Coastal Program should be amended to incorporate such development shall not be effective unless a majority of the electors of Sonoma County, in a general or special election, approve the proposed amendment. The decision on whether to call a special election or a general election shall be in the discretion of the Board of Supervisors.

(b) The Board of Supervisors of Sonoma County is hereby authorized and directed to enact any further ordinances or regulations necessary to give effect to this section and specifically may require that the person seeking any such amendment to the County's Certified Local Coastal Program pay, to the extent permitted by law, all costs associated with the special or general election required herein.

(c) The referendum provided for by this section is intended to extend only to those legislative acts which may be validly exercised by the Sonoma County Board of Supervisors in connection with the amendment of the County's Certified Local Coastal Program to provide for the development of on-shore facilities to support off-shore oil and gas exploration and development. Neither this chapter nor this section is intended, and shall not be construed, to apply to any activity or program which is regulated by federal or state law, to the extent that such application of this section or chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory activities. It is the intention of the Board of Supervisors and the people of the County of Sonoma that this ordinance shall be interpreted to be compatible with federal and state enactments, and in furtherance of the public purposes which those enactments express.

Section 30-4. Cooperation with Other Jurisdictions.

The Board of Supervisors is authorized to cooperate with other California coastal cities and counties for the purpose of discouraging, to the extent permitted by law, oil and gas drilling off the coast of Northern California.

Section 30-5. Recodification or Amendment.

(a) Nothing shall prevent the Board of Supervisors of Sonoma County from recodifying the substantive provisions of this ordinance from time to time to incorporate the provisions of this ordinance into the County Code in the most appropriate location.

(b) No substantive provision of this ordinance shall be amended or repealed without a vote of the People.

SECTION IV. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this ordi-

nance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION V. Within thirty (30) days after the certification of the adoption of this referendum ordinance, the Board of Supervisors shall send a copy of this measure with a letter stating the results of the election to all of the following persons: The President of the United States, United States Secretary of the Interior, the Chairperson of the United States Senate Committee on Energy and National Resources, the Chairperson of the United States House of Representatives Committee on Interior and Insular Affairs, the United States Senators and the United States Representatives representing any portion of the County of Sonoma in the United States Congress, the Governor of the State of California and the Sonoma County representatives in the California Legislature.

SECTION VI. This ordinance shall be effective thirty (30) days after the certification of the adoption of this referendum ordinance.

Passed and adopted by the people of the County of Sonoma at a duly held election on November 4, 1986.

_____

Chair of the Board of
Supervisors of the County of
Sonoma, State of California

ATTEST:

_____

County Clerk and ex-officio
Clerk of the Board of Supervisors
of the County of Sonoma, State
of California

WHEREAS, the Board of Supervisors concurs in the findings set forth in the preceding ordinance;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Sonoma, State of California, that the foregoing proposed ordinance be submitted to a vote of the qualified electors of Sonoma County in the following manner:

1. There shall be included on the ballot to be marked by all Sonoma County voters, in addition to any other matters required by law, a ballot measure in substantially the form following:

> Shall the ordinance requiring voter approval for on-shore facilities supporting off-shore oil and gas exploration and development and expressing the strong opposition of the citizens of the County of Sonoma to proposed off-shore oil and gas developments affecting Sonoma County be approved? YES ☐ NO ☐

1. A (+) placed in the voting square after "Yes" shall be counted in favor of the adoption of the proposed ordinance. A (+) placed in the voting square after "No" shall be counted against the adoption of the proposed ordinance.

2. The ballot to be used at said election shall be, both as to form and matter contained therein, such as may be required by law.

3. The County Clerk is hereby authorized, instructed and directed to provide and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphanalia that may be necessary in order to properly and lawfully conduct said election.

4. The County Clerk is further directed to take the necessary and appropriate action to provide the necessary election officers, polling places and voting precincts.

5. In accordance with the provisions of the Elections Code of the State of California, the County Counsel is authorized to prepare an impartial analysis of the measure.

6. The polls for said election shall be open during the hours required by law and said election with respect to the foregoing ballot measure shall be held and conducted as provided by law for the holding of County referendum elections.

7. Notice of the time and place of holding of said election together with any other notices required by law shall be given by the County Clerk.

8. Arguments for and against the measure may be submitted in conformance with Elections Code section 3780 et seq.

BE IT FURTHER RESOLVED, that the Board calls an election of the measure described herein and orders the election to be consolidated with the general election called for November 4, 1986.

SUPERVISORS:

NICOLAS —— HARBERSON —— RUDEE ——

CARPENTER —— ESPOSTI ——

AYES: 5 NOES: —— ABSENT: ——

ABSTAIN: ——

SO ORDERED.

COASTAL PROTECTION INITIATIVE

MEASURE A

"Initiative measure proposing ordinance amending County Local Coastal Program. Reenacts or changes 37 specified policies concerning new development, public works, energy, agriculture, sensitive habitats, and visual resources. Prevents Board of Supervisors from changing these policies without election."

(Full Text)

The people of the County of San Mateo do ordain as follows:

Section 1. The purposes of this ordinance are:

(1) To protect the farm lands, forests, beaches, scenic beauty and other natural resources of the San Mateo Coast from poorly located, excessive and harmful development;

(2) To preserve watersheds, environmentally sensitive areas and wildlife habitats;

(3) To maintain agriculture and timber uses on the Coast, including provision of housing for employees;

(4) To limit urban-type development to existing urban areas;

(5) To prevent the construction of onshore facilities and pipelines for offshore oil drilling;

(6) To limit the costs to County taxpayers of roads, fire protection, law enforcement, and other government services by restricting distant and sprawling development on the Coastside;

(7) To stabilize and make more permanent essential safeguards of the County's Local Coastal Program, by requiring that any impairment of those safeguards be approved by the voters of the County; and

(8) In general, to conserve the natural heritage and beauty as well as the remarkable diversity of San Mateo County, for current and future generations, yet allow reasonable use of the land.

Section 2. Findings:

(1) Importance of San Mateo Coastside. The San Mateo Coastside is a vital and beautiful natural resource. Its fields, forests, beaches, streams, hillsides and wildlife add immeasurably to the quality of the environment and life in the County. They provide an important contrast to the County's heavily built-up urban areas, as well as offer habitat for a large variety of wild plants and animals.

(2) Harm to Historic and Natural Qualities. There has been a great amount of development in San Mateo County, including construction on the Coastside. Many of the valuable historic and natural qualities of the County have been destroyed or impaired; much that remains is in jeopardy. If safeguards are not maintained and strengthened, many of these remaining qualities will be permanently lost.

(3) Pressure for Intensive Development. Pressures for building on the Coastside are intensifying rapidly, especially with the construction or proposed construction of larger highways, increased water supplies, and new sewage treatment facilities. The possibilities of extensive urban development are great. Without adequate protections, the Coastside ultimately could be densely developed.

(4) Impact of Oil Drilling. There is imminent threat of major oil drilling off the San Mateo Coast, with resulting construction of extensive onshore industrial facilities, degradation of beaches, marine habitats, and coastal marshes, air and water pollution, and destruction of invaluable scenic views by offshore drilling platforms.

(5) Protection of Agriculture and Tourism. Agriculture is the second largest industry in the County. It should be protected against displacement or serious interference by commercial, residential, or other development. Tourism, also a major industry in the County, is critically dependent upon preservation of coastside natural and scenic qualities.

(6) Reduction of Costs to Taxpayers. Distant, sprawling development on the Coast will add materially to the cost to County taxpayers of providing roads, fire protection, law enforcement and other services.

(7) Maintenance of Coastal Protection Safeguards. The County earlier adopted a strong Local Coastal Program to protect Coastal resources, after many studies and extensive public participation. The County Government has shown a willingness, however, to weaken the protections of this Program and to permit excessive and poorly located development. Because of the vital importance of the Coast, it is necessary to provide more stability and permanence to the Local Coastal Program, by requiring that changes in essential policies by approved by

Section 3 Enactment of Key Local Coastal Program Policies

The following policy provisions of the San Mateo County Local Coastal Program, as amended in this section, are enacted by this ordinance. These provisions may be repealed or amended only by the voters of San Mateo County, except that the Board of Supervisors, in conformance with the California Coastal Act of 1976 and other state law, may amend the provisions to further restrict non-agricultural development, density, or use. Other provisions of the Local Coastal Program may be amended by the Board of Supervisors in conformance with the Coastal Act, provided that the amendments are consistent with the provisiors of this ordinance.

Local Coastal Program Policies

LOCATING AND PLANNING NEW DEVELOPMENT COMPONENT

The County will:

RURAL AREAS

1.3 Land Uses and Development Penalties in Rural Areas

a. Allow new development (as defined in section 30106 of the California Coastal Act of 1976) in rural areas only if it is demonstrated that it will not (1) have significant adverse impacts, either individually or cumulatively, on coastal resources or (2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production.

b. Permit in rural areas land uses designated on the Local Coastal Program Land Use Plan Maps and conditional uses, at densities specified in Table 1.2 and 1.3.

c. Require density credits for non-agricultural land uses in rural areas, including any residential use, except affordable housing (to the extent authorized in Policy 3.27 of the Local Coastal Program on March 25, 1986, the date notice of circulation of this ordinance was published) and farm labor housing. One density credit shall be required for each 315 gallons maximum daily water use as a result of a land use. For purposes of this ordinance, a single family dwelling unit shall be deemed to use 315 gallons per day. In order to give priority to Public and Commercial Recreation land uses, one density credit shall be required for those uses for each 630

gallons of maximum daily water use. Water use shall be calculated on the best available information and shall include all appurtenant uses, e.g. landscaping, swimming pools, etc.

TABLE 1.3

MAXIMUM DENSITY CREDITS

In the rural areas of the Coastal Zone which are zoned Planned Agricultural District, Resource Management, or Timberland Preserve, determine the maximum number of density credits to which any legal parcel is entitled by using the following method of calculation.

a. Prime Agricultural Lands

One density credit for that portion of a parcel which is prime agricultural land as defined in Policy 5.1. For parcels with less than 160 acres of prime land, density credit shall be proportioned on the basis of 1 credit per 160 acres (i.e. shall be that fraction of one density credit which equals the number of acres of prime land divided by 160).

b. Lands With Landslide Susceptibility

One density credit for that portion of a parcel which lies within any of the three least stable categories (categories V, VI and L) as shown on the U.S. Geological Survey Map MF 360, "Landslide Susceptibility in San Mateo County," or its current replacement. For parcels with less than 160 acres of such land, density credit shall be proportioned on the basis of 1 credit per 160 acres.

c. Land With Slope 50% or Greater

One density credit for that portion of a parcel which has a slope 50% or greater. For parcels

with less than 160 acres of such land, density credit shall be proportioned on the basis of 1 credit per 160 acres.

d. Remote Lands

One density credit per 160 acres for that portion of a parcel over ½ mile from a public road that was an existing, all weather, through public road before the County Local Coastal Program was initially certified in November 1980.

e. Land With Slope 30% But Less Than 50%

One density credit per 80 acres for that portion of a parcel which has a slope 30% but less than 50%.

f. Land Within Rift Zones or Active Faults

One density credit per 80 acres for that portion of a parcel which is located within the rift zone of fractured rock of an active fault as defined by the U.S. Geological Survey and mapped on USGS Map MF 355, "Active Faults, probably active faults, and associated fracture zones in San Mateo County," or its current replacement.

g. Lands Within 100 Year Flood Plain

One density credit per 60 acres for that portion of a parcel falling within a 100 year flood plain as most recently defined by the Federal Emergency Management Agency, the U.S. Geological Survey, or the U.S. Army Corps of Engineers.

h. Land With Slope 15% But Less Than 30%

One density credit per 60 acres for that portion of a parcel with a slope in excess of 15% but less than 30%.

i. Land Within Agricultural Preserves or Exclusive Agricultural Districts

One density credit per 60 acres for that portion of a parcel within agricultural preserves for the exclusive Agricultural Districts as defined in the Resource Conservation Area Density Matrix Policy on March 25, 1986.

j. All Other hands

One density credit per 40 acres for that portion or portions of a parcel not within the above areas.

k. Bonus Density Credit for New Water Storage Capacity

One bonus density credit shall be allowed for each 24.5 acre feet of new water storage capacity demonstrated to be needed and developed for agricultural cultivation or livestock. Water from this storage may be used only for agricultural purposes. These bonus credits may be used on site or transferred to another parcel. However, none of the credits may be used on prime agricultural lands or in scenic corridors. Use of the credits shall be subject to Planning Commission approval in accordance with the provisions of this and other county ordinances.

The same portion of a parcel is covered by two or more of the subsections a. through j., the density credit for that portion shall be calculated solely on the basis of the subsection which permits the least density credit.

1.5 Conservation Easments

a. In rural areas designated as open space on the Land Use Plan Maps require the applicant for a land division, as a condition of approval, to grant

to the County (and the County to accept) a conservation easement containing a covenant, running with the land in perpetuity, which limits the use of the land covered by the easement to uses consistent with open space (as defined in the California Open Space Land Acts of 1972 on January 1, 1980).

b. Exempt land divisions which solely provide affordable housing, as defined in Policy 3.7 of the Local Coastal Program on March 25, 1986, from the requirements in subsection a.

1.6 Location of New Development

a. Direct new development to existing urban areas and rural service centers in order to: (1) discourage urban sprawl, (2) maximize the efficiency of public facilities, services, and utilities, (3) minimize energy consumption, (4) encourage the orderly formation and development of local governmental agencies, (5) protect and enhance the natural environment, and (6) revitalize existing developed areas.

1.8 Legalizing Parcels

Require a Coastal Development Permit when issuing a Certificate of Compliance to legalize parcels under Section 66499.35(b) of the California Government Code (i.e., parcels illegally created without benefit of required government review and approval).

1.9 Coastal Development Permits Standards for Legalizing Parcels

Require Coastal Development Permits to legalize parcels. Where applicable, conditions permits to meet the following standards. (Permit applications shall be considered as "conditional uses" for purposes of review.)

a. On developed illegal parcels created before Proposition 20 (effective date January 1, 1973), on lands located within 1,000 yards of the Mean High Tide Line, or the Coastal Act of 1976 (effective date January 1, 1977), on lands shown on the official maps adopted by the Legislature, which received all required building permits or government approvals for development, a Coastal Development Permit to legalize the parcel shall be used without conditions.

b. On developed illegal parcels created before Proposition 20, on lands within 1,000 yards of the Mean High Tide Line, or the Coastal Act of 1976, on lands shown on the official maps adopted by the Legislature, which received a Coastal Permit for the development, a Coastal Permit to legalize the parcel shall be issued without conditions.

c. On illegal parcels created and developed after Proposition 20, on lands within 1,000 yards of the Mean Tide Line, or the Coastal Act of 1976, on lands shown on the official maps adopted by the Legislature, a Coastal Development Permit shall be issued if the development and parcel configuration do not have any substantial adverse impact on coastal resources, in conformance with the standards of the Coastal Development District regulations. Permits to legalize this type of development and parcel shall be conditioned to maximize consistency with Local Coastal Program resource protection policies.

d. On undeveloped parcels created before Proposition 20, on lands within 1,000 yards of the Mean High Tide Line, or the Coastal Act of 1976, on lands shown on the official maps adopted by the Legislature, a Coastal Permit shall be issued to

legalize the parcel if the parcel configuration will not have any substantial adverse impact on coastal resources, in conformance with the standards of the Coastal Development District regulations. Permits to legalize this type of parcel shall be conditioned to maximize consistency with Local Coastal Program resource protection policies. A separate Coastal Development Permit, subject to all applicable Local Coastal Program requirements, shall be required for any development of the parcel.

e. On undeveloped illegal parcels created after Proposition 20, on lands located within 1,000 yards of the Mean High Tide Line, or the Coastal Act of 1976, on lands shown on the official map adopted by the Legislature, a Coastal Development Permit is necessary to legalize the parcel. A permit may be issued only if the land division is in conformance with the standards of the Coastal Development District regulations.

GENERAL POLICIES

PUBLIC WORKS COMPONENT

The County will:

2.4 Ordinance Conformity

As a condition of Coastal Development Permit approval, special districts, public utilities and other government agencies shall conform to the County's zoning ordinance and the policies of the Local Coastal Program.

2.6 Capacity Limits

Limit development or expansion of public works facilities to a capacity which does not exceed that

needed to serve buildout of the Local Coastal Program.

2.14 Establishing Service Area Boundaries

a. Confine urban level services provided by governmental agencies, special districts and public utilities to urban areas, rural service centers and rural residential areas as designated by the Coastal Program on March 25, 1986.

b. Redraft the boundaries of special or public utilities providing urban level services to correspond to the boundaries or urban areas, rural service centers and rural residential areas established by the Local Coastal Program.

c. Allow exceptions to a. and b. when all alternatives have been fully explored and a special district or public utility is required to maintain some rural land within its boundaries in order to continue a service to its customers which is (1) otherwise consistent with the policies of the Local Coastal Program, (2) maintains the rural nature of undeveloped areas, particularly the use and productivity of agricultural land, (3) maintains the present level of service to existing users in undeveloped areas, and (4) where an illegal situation or great hardship would be created by detachment from a special district or public utility.

2.15 New or Expanded Special Districts

Allow the formation or expansion of special districts only when the new or expanded district would not cause or allow development or users inconsistent with the Local Coastal Program.

ENERGY COMPONENT

ONSHORE FACILITIES FOR OFFSHORE OIL

4.23 Permit Requirement

a. Define onshore facilities for offshore oil as temporary or permanent service bases, including but not limited to warehouse, open storage or stockpiling areas, offices, communication centers, harbor or wharf development or improvement, parking and helipad areas, processing plants and oil storage tanks.

4.25 Location Criteria

Prohibit onshore facilities for offshore oil or gas from locating in the Coastal Zone.

PIPELINES AND TRANSMISSION LINES

4.28 Permit Requirements

Require the issuance of a Coastal Development Permit for all pipelines and transmission lines in the Coastal Zone which are not under the jurisdiction of the California Energy Commission. Prohibit pipelines for the transmission of offshore oil and gas.

AGRICULTURE COMPONENT

The County will:

OPEN FIELD AGRICULTURE

5.1 Definition of Prime Agricultural Lands

Define prime agricultural lands as:

(1) All land which qualifies for rating as Class I or Class II in the U.S. Department of Agriculture Soil Conservation Service Land Use Capability Classification, as well as all Class III lands capable of growing artichokes or Brussels sprouts.

(2) All land which qualifies for rating 80-100 in the Storie Index Rating.

(3) Land which supports livestock for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the U.S. Department of Agriculture.

(4) Land planted with fruit or nut bearing trees, vines, bushes, or crops which have a non-bearing period of less than five years and which normally return during the commercial bearing period, on an annual basis, from the production of unprocessed agricultural plant production not less than $200 per acre.

(5) Land which has returned from the production of an unprocessed agricultural plant product an annual value that is not less than $200 per acre within three of the five previous years.

The $200 per acre amount in subsection (4) and (5) shall be adjusted regularly for inflation, using 1965 as the base year, according to a recognized consumer price index.

5.2 Designation of Prime Agricultural Lands

Designate any parcel which contains prime agricultural lands as Agriculture on the Local Coastal Program Land Use Plan Map, subject to the following exceptions: State Park Lands existing as of the date of Local Coastal Program certification, urban areas, rural service centers, and solid waste disposal sites necessary for the health, safety, and welfare of the County.

5.3 Definition of Lands Suitable for Agriculture

Define other lands suitable for agriculture as lands on which existing or potential agricultural use is

feasible, including dry farming, animal grazing, and timber harvesting.

5.4 Designation of Lands Suitable for Agriculture

Designate any parcel, which contains other lands suitable for agriculture as Agriculture on the Local Coastal Program Land Use Plan Maps, subject to the following exceptions: urban areas, rural service centers, State Park lands existing as of the date of Land Use Plan certification, and solid waste disposal sites necessary for the health, safety and welfare of the County.

5.5 Permitted Uses on Prime Agricultural Lands Designated as Agriculture

a. Permit agricultural and agriculturally related development on prime agricultural lands. Specifically, allow only the following uses: (1) agricultural including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock; (2) nonresidential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, stables for farm animals, fences, water wells, well covers, pump houses, and water storage tanks, water impoundments, water pollution con- (line missing) of produce grown in San Mateo County (3) soil dependent greenhouse and nurseries, and (4) repairs, alterations, and additions to existing single family residences.

b. Conditionally permit the following uses: (1) single family residences, (2) farm labor housing, (3) public recreation and shoreline access trails, (4) nonsoil dependent greenhouses and nurseries, (5) onshore oil and gas exploration, production, and minimum necessary related storage, (6) uses ancillary to agriculture, (7) permanent

roadstands for the sale of produce, provided that the amount of prime agricultural land converted does not exceed one quarter (1/4) acre, (8) facilities for the processing, storing, packaging and shipping of agricultural products, and (9) commercial wood lots and temporary storage of logs.

5.6 Permitted Uses on Lands Suitable for Agriculture Designated as Agriculture

a. Permit agriculture and agriculturally related development on land suitable for agriculture. Specifically, allow only the following uses: (1) agriculture including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock; (2) non-residential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, fences, water wells, well covers, pump houses, water storage tanks, water impoundments, water pollution control facilities for agricultural purposes, and temporary roadstands for seasonal sale of produce grown in San Mateo County; (3) dairies; (4) greenhouses and nurseries; and (5) repairs, alterations, and additions to existing single-family residences.

b. Conditionally permit the following uses: (1) single-family residences, (2) farm labor housing, (3) multi-family residences if affordable housing, (4) public recreation and shoreline access trails, (5) schools, (6) fire stations, (7) commercial recreation including county inns, stables, riding academies, rod and gun clubs, and private beaches, (8) aquacultural activities, (9) wineries, (10) timber harvesting, commercial wood lots and storage of logs, (11) onshore oil and gas exploration, production, and storage, (12) facil-

ities for the processing, storing, packaging and shipping of agricultural products, (13) uses ancillary to agricultural, (14) dog kennels and breeding facilities, (15) limited, low intensity scientific/technical research and test facilities, and (16) permanent roadstands for the sale of produce.

5.7 Division of Prime Agricultural Land Designated as Agricultural

a. Prohibit the division of parcels consisting entirely of prime agricultural land.

b. Prohibit the division of prime agricultural land within a parcel, unless it can be demonstrated that existing or potential agricultural productivity would not be reduced.

c. Prohibit the creation of new parcels whose only building site would be on prime agricultural land.

5.8 Conversion of Prime Agricultural Land Designated as Agriculture

a. Prohibit conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated.

(1) that no alternative site exists for the use,

(2) clearly defined buffer areas are provided between agricultural and non-agricultural uses.

(3) the productivity of any adjacent agricultural land will not be diminished, and

(4) public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs of degraded air and water quality.

b. In the case of a recreational facility on prime agricultural land owned by a public agency, require the agency:

(1) to execute a recordable agreement with the County that all prime agricultural lands and other land suitable for agriculture which is not needed for recreational development or for the protection and vital functioning of a sensitive habitat will be permanently protected for agriculture and,

(2) whenever legally feasible, to agree to lease the maximum amount of agricultural land to active farm-operators on terms compatible with the primary recreational and habitat use.

5.9 Division of Land Suitable for Agriculture Designated as Agriculture

a. Prohibit the division of lands suitable for agriculture unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agricultural would not be reduced.

10 Conversion of Land Suitable for Agriculture Designated as Agriculture

a. Prohibit the conversion of lands suitable for agriculture within a parcel to conditionally permitted uses unless all of the following can be demonstrated:

(1) all agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable.

(2) continued or renewed agricultural use of the soils is not feasible as defined by Section 30108 of the Coastal Act.

(3) clearly defined buffer areas are developed between agricultural and nonagricultural uses.

(4) the productivity of any adjacent agricultural lands is not diminished.

(5) public service and facility expansions and permitted uses do not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

b. For parcels adjacent to urban areas, permit conversion if the viability of agricultural uses is severely limited by conflicts with urban uses, the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development, and conditions (3), (4) and (5) in subsection a. are satisfied.

11 Maximum Density of Development Per Parcel

a. Limit non agricultural development densities to those permitted in rural areas of the Coastal Zones under the Locating and Planning New Development Component.

b. Further, limit non-agricultural development to that amount which can be accommodated without adversely affecting the viability of agriculture.

c. In any event, allow the use of one density credit on each legal parcel.

d. A density credit bonus may be allowed for the merger of continguous parcels. The maximum bonus shall be calculated by

(1) determining the total number of density credit on all parcels included in a master development plan, and

(2) multiplying that total by 25% if the merger is entirely of parcels of 40 acres or less, or by 10% if some or all of the parcels combined

are larger than 40 acres. The merged parcel shall be entitled to the number of density credits on the separate parcels prior to merger plus the bonus calculated under this subsection. The total number of density credits may be used on the merged parcel. Once a parcel or portion of a parcel has been part of a merger for which bonus density credit has been given under this subsection no bonus credit may be allowed for any subsequent merger involving that parcel or portion of a parcel.

e. Density credits on parcels consisting entirely of prime agricultural land, or of prime agricultural land and land which is not developable under the Local Coastal Program, may be transferred to other parcels in the Coastal Zone, provided that the entire parcel from which credits are transferred is restricted permanently to agricultural use by an easement granted to the county or other governmental agency. Credits transferred may not be used in scenic corridors or on prime agricultural lands; they may be used only in accordance with the policies and standards of the Local Coastal Program.

12 Minimum Parcel Size for Agricultural Parcels

Determine minimum parcel sizes on a case by case basis to ensure maximum existing or potential agricultural productivity.

13 Minimum Parcel Size for Non-Agricultural Parcels

a. Determine minimum parcel size on a case by case basis, to ensure that domestic well water and on-site sewage disposal requirements are met.

b. Make all non-agricultural parcels as small as practicable (residential parcels may not ex-

ceed 5 acres) and cluster them in one or as few clusters as possible.

14 Master Land Division Plan

a. In rural areas designated as Agriculture on the Local Coastal Program Land Use Plan Maps on March 25, 1986, require the filing of a Master Land Division Plan before the division of any parcel. The plan must demonstrate: (1) how the parcel will ultimately be divided, in accordance with permitted maximum density of development, and (2) which parcels will be used for agricultural and non-agriculture uses, if conversion to those uses are permitted. Division may occur in phases. All phased divisions must conform to the Master Land Division Plan.

b. Exempt land divisions which solely provide affordable housing, as defined in Policy 3.7 on March 25, 1986, from the requirements in a.

c. Limit the number of parcels created by a division to the number of density credits to which the parcel divided is entitled, prior to division, under Table 1.3 and Policy 5.11 d. and e., except as authorized by Policy 3.27 on March 25, 1986.

5.15 Mitigation of Land Use Conflicts

a. When a parcel on or adjacent to prime agricultural land or other land suitable for agricultural is subdivided for non-agricultural uses, require that the following statement be included, as a condition of aproval, on all parcel and final maps and in each parcel deed:

"This subdivision is adjacent to property utilized for agricultural purposes. Residents of the subdivision may be subject to inconveni-

ence or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including plowing, spraying, pruning and harvesting, which occassionally generate dust, smoke, noise, and odor. San Mateo County has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations."

b. Require the clustering of all non-agricultural development in locations most protective of existing or potential agricultural uses.

c. Require that clearly defined buffer areas be provided between agricultural and non-agricultural uses.

d. Require public agencies owning land next to agricultural operations to mitigate rodent, weed, insect, and disease infestation, if these problems have been identified by the County's Agricultural Commissioner.

5.16 Eastments on Agricultural Parcels

As a condition of approval of a Master Land Division Plan, require the applicant to grant to the County (and the County to accept) an easement containing a covenant, running with the land in perpetuity, which limits the use of Division Plan, require the applicant to grant to the land covered by the easement to agricultural uses, non-residential development customarily considered accessory to agriculture, and farm labor housing. The easement shall specify that, anytime after 3 years from the date of recordation of the easement, land within the

boundaries of the easement may be converted to other uses consistent with open space (as defined in the California Open Space Lands Act of 1972 on January 1, 1980) upon a finding that changed circumstances beyond the control of the land owner or operator have rendered the land unusable for agriculture and upon approval by the State Coastal Commission of a Local Coastal Program amendment changing the land use designation to Open Space. Uses consistent with the definition of open space shall mean those uses specified in the Resource Management Zone (as in effect on November 18, 1980). Any land use allowed on a parcel through modification of an agricultural use easement shall recognize the site's natural resources and limitations. Such uses shall not include the removal of significant vegetation (except for renewed timber harvesting activities consistent with the policies of the Local Coastal Program), or significant alterations to natural landforms.

5.22 Protection of Agricultural Water Supplies

Before approving any division or conversion of prime agricultural land or land suitable for agriculture require that:

a. All non-agricultural uses permitted on a percel demonstrate the existing availability of a potable and adequate on-site well water source.

b. Adequate water supplies for agricultural production and sensitive habitat protection in the watershed are not diminished.

c. All new non-agricultural parcels are severed from land bordering a stream and their deeds prohibit the transfer of riparian rights.

SENSITIVE HABITATS COMPONENT

GENERAL POLICIES

The County will:

7.1 Definition of Sensitive Habitats

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission. (2) all perennial and intermittent streams and their tributaries. (3) coastal tide lands and marshes. (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by mitigatory and resident water-associated bids for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.

Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

7.3 Protection of Sensitive Habitats

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

7.4 Permitted Uses in Sensitive Habitats

a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.

b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.

VISUAL RESOURCES COMPONENT

The County will:

15 Structures

Minimize the number of structures located in open fields and grassland areas; require that structures be designed in scale with the rural character of the region, and that they be clustered near existing natural or man-made vertical features.

7 Ridgelines and Hilltops

a. Prohibit the location of new development on ridgelines and hilltops unless there is no other buildable area on the parcel.

b. Prohibit the removal of tree masses which would destroy the silhouette of ridgeline or hilltop forms.

c. Restrict the height of structures to prevent their projection above ridgeline or hilltop silhouettes.

d. Prohibit land divisions which would create parcels whose only building site would be on ridgelines or hilltops.

15 Coastal Views

Prevent development (including buildings, structures, fences, un-natural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches.

16 Alteration of Landforms

Minimize the visual degradation of natural landforms caused by cutting, filing, or grading for building sites, access roads, or public utilities by:

a. Concentrating development so that steep hillsides may be left undisturbed.

b. Requiring structures to be designed to fit hillsides rather than altering the landform to accommodate buildings designed for level sides.

c. Prohibiting new development which requires grading, cutting, or filing that would substantially alter or destroy the appearance of natural landforms.

d. Destroying as much as possible the natural topographic contours after any permitted temporary alteration of landforms during construction, timber harvesting, or mineral extraction.

18 Location of New Development

Require

a. The new development be located, sited, and designed to fit the physical setting, so that its presence is subordinate to the pre-existing

character of the site, enhances the scenic and visual qualities of the area, or maintains the natural characterics of existing major water courses, established and mature trees, or dominent vegetative communities.

b. That roads, buildings, and other structural improvements be constructed to fit the natural topography and to minimize grading and modification of existing landforms.

c. That private roads and driveways be shared, where feasible, to reduce the amount of grading, cutting and filing required to provide access.

d. That all development minimize the impacts of noise, light, glare and odors on adjacent properties and the community at large.

Section 4. Rural Area Designations

(a) for purposes of this ordinance, "rural areas" outside the urban/rural boundary, as drawn on the Local Coastal Program Land Use Plan Maps in effect on March 25, 1986, that were designated Agriculture, General Open Space, Timber Preserve or Public Recreation on those maps on that date. Rural areas designated as General Open Space on those maps on that date shall be deemed "open space on the Land Use Plan Maps" for purposes of Policy 1.9a.

(b) Rural areas shall be regarded as zoned Planned Agricultural District, Resource Management, or Timberland Preserve for purposes of Section 3. Table 1.3, if they were zone Planned Agricultural District, Resource Management/ Coastal Zone, or Timberland Preserve Zone/ Coastal Zone on March 25, 1986.

Section 5. Restriction of Onshore Oil Facilities

Policies 4.23b, 4.24 and 4.27 of the Local Coastal Program on March 25, 1986, regarding onshore facilities for offshore oil and gas exploration and production, are limited to those situations, if any, in which state or federal law requires that onshore facilities be permitted. Policies 4.29-4.37 shall apply to pipelines for the transmission of offshore oil and gas only to the extent that the County must permit those pipelines under state or federal law.

Section 6. Exceptions to Policies

Exceptions and exemptions provided in the Local Program, on March 25, 1986, to the Policies in Section 3 shall be permitted, except to the extent otherwise provided by this ordinance. These exceptions and exemptions may be deleted or restricted by the Board of Supervisors, but they may not be increased, expanded or otherwise altered.

Section 7. Conflict with Other Provisions

In case of conflict with other policies of the Local Program or other county plans, ordinances, regulations or policies, the provisions of this ordinance shall govern.

Section 8. Nonapplicability of Provisions

The provisions of this ordinance shall not be applicable to the extent, but only to the extent, that they would violate the constitution or law of the United States or the State of California.

Secion 9. County Government Responsibilities

(a) The Board of Supervisors and other officials and employees of the County Government are mandated by the citizens of the County to apply and enforce the provisions of this ordinance and the Local Coastal Program generally, except to the extent that application of any provision is determined by a valid and final order of the California Coastal Commission to violate the California

Coastal Act of 1976, or is determined by a valid order of a court to violate the Constitution or law of California or the United States.

(b) The Board of Supervisors shall submit any amendments to the Local Coastal Program by this ordinance, which require approval, to the California Coastal Commission, not later than 60 days after the ordinance becomes effective, in an appropriate manner with necessary supporting documents and information.

Section 10. Repeal or Amendment of Ordinance

(a) This ordinance may be repealed or amended only by a majority of the voters of San Mateo County voting in a valid election. The Board of Supervisors may, by four-fifths vote, after consideration by the County Planning Commission, submit proposed amendments to the voters.

(b) Amendments to the Local Coastal Program with respect to Farm Labor Housing Areas do not require voter approval, but this exception to voter approval shall be limited to areas whose designation as a Farm Labor Housing Area was approved by the County Planning Commission prior to March 25, 1986.

Section 11. Severability

If any provision or application of any provision of this ordinance is held unconstitutional or violative of any state or federal law the invalidation shall not affect the validity or operative effect of any other provision or any other application of any provision. To this and the provisions and applications of the provisions of this ordinance are severable and would have ben enacted even though other provisions or applications are held unconstitutional or otherwise violative of law.

ORDINANCE REQUIRING VOTER APPROVAL FOR NEW OFFSHORE FACILITIES OF AT LEAST 20,000 SQUARE FEET SUPPORTING OFFSHORE OIL AND GAS EXPLORATION AND DEVELOPMENT, AND EXPRESSED THE STRONG OPPOSITION OF THE CITIZENS OF MONTEREY COUNTY TO PROPOSED OFFSHORE OIL DEVELOPMENTS AFFECTING THE MONTEREY COUNTY COAST, AND THE ENVIRONMENT, CHARACTER AND ECONOMY OF MONTEREY COUNTY

"The people of the County of Monterey do ordain as follows:

SECTION 1.

The purpose of this ordinance is to express the strong opposition of the people of Monterey County to proposed offshore oil developments which would negatively affect the Monterey County coast, the character and environment of the community, and the local Monterey County economy. A further purpose of this ordinance is to assure that any proposed onshore facilities in support the exploration for and development of offshore oil and gas will be permitted only after a vote of the people.

SECTION 2.

The Monterey County Code is hereby amended by adding Chapter 16.55 to read as follows:

Chapter 16.55

ONSHORE FACILITIES SUPPORTING OFFSHORE OIL AND GAS EXPLORATION AND DEVELOPMENT

Section:

16.55.010 Findings.

16.55.020 Voter Approval for Onshore Facilities.

16.55.030 Recodification and Amendment.

16.55.040 Severability.

16.55.010 FINDINGS.

It is hereby found and determined as follows:

1. The federal government has proposed to open up virtually the entire California coastline to offshore oil and gas exploration and development, including the coastline off Monterey County.

2. Coastal areas off Monterey County have been determined to be high priority areas for offshore oil and gas exploration and development by various multinational oil companies.

3. Offshore oil and gas development off Monterey County would have the following significant effects upon this community:

a. If offshore oil and gas development occurs off the Monterey County coast, significant new air pollution is absolutely inevitable. One drillship produces approximately the same amount of air pollution as 23,000 cars driving fifty miles per day. Despite this fact, the federal government does not presently require that offshore oil and gas developments comply with State and local air pollution rules.

b. Offshore oil and gas development off the Monterey County coast would expose the coast to the danger of massive oil spills, from an oil well blowout or a tanker accident. Even if a major accident never occurs, routine small oil releases are absolutely inevitable if offshore oil and gas development is permitted. Such small releases of oil would degrade our sensitive marine environment, put oil on our beaches, and expose both marine mammals and seabirds to great danger.

c. Offshore oil and gas development on the Monterey County coast would inevitably result in the discharge of large volumes of highly toxic drilling muds onto the ocean floor. These toxic materials would degrade the sensitive marine environment, put all forms of marine life at greater risk, and pose a threat to human beings who might later eat fish contaminated with accumulated toxics.

d. Offshore oil and gas development off the Monterey County coast would put the existing local economy in jeopardy, because: (1) each offshore oil and gas development would significantly and substantially interfere with the operations of our fishing industry; (2) would detract from the experience of visitors to our coast, and, particularly if massive oil spill occurs, place our tourism industry in danger; and (3) place significant pressures on coastal lands and water reserved for agriculture, and would hence threaten our agricultural industry.

4. The onshore impacts of offshore oil and gas development would be substantial:

a. The recretational use of local port facilities could be usurped by oil industry costs.

b. Noisy helicopter traffic could become a significant irritant to County residents.

c. The massive fresh water supplies needed for offshore oil and gas development might require that water be diverted from existing users, or that costly and environmentally-damaging dam and water projects be constructed.

d. Existing and approved sewage treatment facilities cannot accommodate onshore requirements. Expansion of existing and approved facilities would be in violation of State and Federal air and water quality standards.

e. Coastal agricultural and other lands would be needed for oil processing, treatment, and transportation

facilities, or for supply losses for offshore oil and gas development, potentially transforming our open and agricultural lands along the coast into the industrial storing area for oil and gas developments offshore.

5. Rather than consuming offshore oil and gas resources now, our nation should conserve these resources, since they are non-renewable. Our nation should develop a national energy strategy based on energy conservation and the increasing use of renewable energy sources. Instead, the federal government has presently reduced or eliminated efforts to increase energy conservation, and to develop renewable energy sources, at the same time that it is attempting to increase the development of non-renewable energy sources like offshore oil and gas. The citizens of Monterey County are under the jurisdiction of the federal government. The citizens of Monterey County do, however, have the legal ability to make significant decisions about onshore facilities which support offshore oil and gas exploration and development.

7. Since the effects of offshore oil and gas development on the people of Monterey County would be significant, it is appropriate that the people of Monterey County reserve for themselves, to the minimum degree possible, decisions on major new onshore facilities which support offshore oil and gas exploration and development.

16.55.020 VOTER APPROVAL FOR ONSHORE FACILITIES.

1. No permit, entitlement, lease, or other authorization of any kind within the County of Monterey which would authorize or allow the development, construction, or installation of any onshore facility necessary for or intended to support offshore oil or gas exploration or development shall be granted unless such authorization is approved by a majority rule of the qualified electors of Monterey County, in a general or special election. For the purpose of this ordinance, the term "onshore facility"

means any facility or land use of at least 20,000 square feet necessary for or intended to support offshore oil or gas exploration, or the development, production, storage, processing, or transportation of oil or gas resources produced or developed offshore, or other activities related to the development of offshore oil or gas resources.

2. When any person proposes to undertake the development when Monterey County of any offshore energy facility related to the exploration or development of offshore oil or gas resource, and requests an amendment of the County's certified Local Coastal Program to facilitate such development, the local government determination required by Public Resources Code Section 30515 shall include a vote of the qualified electors of Monterey County, in a general or special election, and no local government determination approving such an amendment shall be valid unless a majority of the electors voting in such election approve the amendment proposed. The Board of Supervisors of Monterey County are hereby authorized and directed to enact any further ordinances or regulations necessary to give effect to this paragraph, and specifically to require that the person seeking any such amendment to the County's certified Local Coastal Program pay all costs associated with the special or general election required herein.

16.55.030 RECODIFICATION AND AMENDMENT.

Nothing shall prevent the Board of Supervisors of Monterey County from recodifying the substantive provisions of this ordinance from time to time to incorporate the provisions of this ordinance into the County Code in the most appropriate location. No substantive provision of this ordinance, however, shall be amended or repealed, except by a vote of the people.

16.55.040 SEVERABILITY.

If any portion of this ordinance is hereafter determined to be invalid, all remaining portions of this ordinance

shall remain in full force and effect, and to this extent, the provisions of this ordinance are severable.

SECTION 3.

Within thirty (30) days after the certification of the adoption of this referendum ordinance, the Board of Supervisors shall send a copy of this measure, with a letter stating the results of the election, to all of the following persons: The President of the United States; the United States Secretary of the Interior; the Chairperson of the United States Senate Committee on Energy and Resources; the United States Senators and United States Representatives representing the State of California in the United States Congress; the Governor of the State of California; the California State Senator representing Monterey County; and the California State Assembly Member representing Monterey County.

SECTION 4.

This ordinance shall take effect as provided by law.

AN INITIATIVE ORDINANCE BY THE VOTERS OF THE COUNTY OF SAN LUIS OBISPO REQUIRING VOTER APPROVAL OF NEW ONSHORE FACILITIES SUPPORTING OFFSHORE OIL AND GAS ACTIVITIES

WHEREAS, the County of San Luis Obispo has authority under State law, through its Board of Supervisors, to enact ordinances regulating land use in the interest of public health, safety, and general welfare; and

WHEREAS, the voters of the County are empowered by the California Constitution and State law to enact such ordinances by a direct initiative process; and

WHEREAS, there is broad citizen concern that serious effects will result from any new onshore processing, storage, or service facilities supporting intensified offshore oil and gas development authorized by the federal and state governments; and

WHEREAS, such facilities threaten the vital and diverse economic character and quality of life in the area; and

WHEREAS, the voters of the County intend by this ordinance to retain unto themselves the final authority to allow such onshore support facilities following any approvals granted by the Board of Supervisors or other County entity, department, or official.

NOW, THEREFORE, the People of the County of San Luis Obispo do ordain as follows:

SECTION 1. No permit, entitlement, lease, or other authorization of any kind within the County of San Luis Obispo which would authorize or allow the development, construction, installation, or expansion of any onshore support facility for offshore oil and gas activity shall be final unless such authorization is approved by a majority

of the votes cast by a vote of the people of the County—San Luis Obispo in a general or special election. For the purpose of this ordinance, the term "onshore support facility" means any land use, installation, or activity required to support the exploration, development, production, storage, processing, transportation, or related activities of offshore energy resources.

SECTION 2. Authorizations obtained from the County after January 1, 1966, shall be subject to the provisions of this ordinance.

SECTION 3. If any section, sentence, clause, phrase, or part of this ordinance shall be held invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall be given full effect consistent with the intent and purpose of the ordinance.

SANTA CRUZ COUNTY MEASURE A ORDINANCE OPPOSING ONSHORE FACILITIES FOR OFFSHORE OIL AND GAS DRILLING

(Full Text of Ordinance)

The Board of Supervisors of the County of Santa Cruz hereby submits to the voters this ordinance for enactment of the following ordinances.

ORDINANCE NO.

ORDINANCE REQUIRING VOTER APPROVAL FOR NEW MAJOR ONSHORE FACILITIES SUPPORTING OFFSHORE OIL AND GAS EXPLORATION AND DEVELOPMENT, AND EXPRESSING THE STRONG OPPOSITION OF THE CITIZENS OF SANTA CRUZ COUNTY TO PROPOSED OFFSHORE OIL DEVELOPMENTS AFFECTING THE SANTA CRUZ COUNTY COAST, AND THE ENVIRONMENT, CHARACTER AND ECONOMY OF SANTA CRUZ COUNTY

The people of the County of Santa Cruz do ordain as follows:

SECTION I

The purpose of this ordinance is to express the strong opposition of the people of Santa Cruz County to proposed offshore oil developments which would negatively affect the Santa Cruz County coast, the character and environment of the community, and the local Santa Cruz County economy. A further purpose of the ordinance is to assure that any proposed offshore facilities to support the exploration for and development of offshore oil and gas will be permitted only after a vote of the people.

SECTION II

The citizens of the County of Santa Cruz hereby declare their opposition to offshore oil developments affecting Santa Cruz County, and the Santa Cruz County Coast, for the reasons stated in Section 3 of this ordinance.

SECTION III

The Santa Cruz County Code is hereby amended by adding Chapter 16.55 to read as follows:

CHAPTER 16.55

ONSHORE FACILITIES SUPPORTING OFFSHORE OIL AND GAS EXPLORATION AND DEVELOPMENT

Sections:

16.55.010 FINDINGS

16.55.020 VOTER APPROVAL FOR ONSHORE FACILITIES

16.55.030 RECODIFICATION AND AMENDMENT

16.55.040 SEVERABILITY

SECTION 16.55.010 FINDINGS. It is hereby found and determined as follows:

1. The federal government has proposed to open up virtually the entire California coastline to offshore oil and gas exploration and development, including the coastline off Santa Cruz County.
2. Coastal areas off Santa Cruz County have been determined to be high priority areas for offshore oil and gas exploration and development by various multinational oil companies.
3. Offshore oil and gas development off Santa Cruz County would have the following significant effects upon the community:

a. If offshore oil and gas development occurs off the Santa Cruz County coast, significant new air pollution is absolutely inevitable. One drilling produces approximately the same amount of air pollution as 23,000 cars driving fifty miles per day. Despite this fact, the federal government does not presently require that offshore oil and gas developments comply with State and local air pollution rules.

b. Offshore oil and gas development off the Santa Cruz County coast would expose the coast to the danger of massive oil spills, from an oil well blowout or a tanker accident. Even if a major accident never occurs, routine small oil releases are absolutely inevitable if offshore oil and gas development is permitted. Such small releases of oil would degrade our sensitive marine environment, put oil on our beaches, and expose both marine mammals and seabirds to great danger.

c. Offshore oil and gas development off the Santa Cruz County coast would inevitably result in the discharge of large volumes of highly toxic drilling muds onto the ocean floor. These toxic materials would degrade our sensitive marine environment, put all forms of marine life at greater risk, and pose a threat to human beings who might later eat fish contaminated with accumulated toxics.

d. Offshore oil and gas development off the Santa Cruz County coast would put the existing local economy in jeopardy, because: (1) such offshore oil and gas development would significantly and substantially interfere with the operations of our fishing industry; (2) would detract from the experience of visitors to our coast, and particularly

if a massive oil spill occurs, place our tourism industry in danger; and (3) place significant pressures on coastal lands and water needed for agriculture, and would hence threaten our agricultural industry.

4. The offshore impacts of offshore oil and gas developments would be substantial.

   a. The recreational use of local port facilities could be usurped by oil industry boats.

   b. Heavy helicopter traffic could become a significant irritant to County residents.

   c. The massive fresh water surpluses needed for offshore oil and gas development might require that water be diverted from casual users or that costly and environmentally damaging dam and water projects be constructed.

   d. Coastal agricultural and other lands would be needed for oil processing, treatment, and transportation facilities, or for supply bases for offshore oil and gas development, potentially transforming our open and agricultural lands along the coast into the industrial staging area for oil and gas developments offshore.

5. Rather than consuming offshore oil and gas resources now, our nation should develop a national energy strategy based on energy conservation and the increasing use of renewable energy sources, instead. The federal government has presently reduced or eliminated efforts to increase energy conservation, and to develop renewable energy sources, at the same time that it is attempting to increase the development of non-renewable energy sources like offshore oil and gas. The citizens of Santa Cruz County are willing and able to do their part in conserving energy, and in developing a society less dependent on non-renewable fossil fuel resources.

6. The citizens of Santa Cruz County have no legal way directly to control offshore oil and gas exploration or development, since oil and gas developments which occur offshore are under the jurisdiction of the federal government. The citizens of Santa Cruz County do, however, have the legal ability to make significant decisions about offshore facilities which support offshore oil and gas exploration and development.

7. Since the effects of offshore oil and gas development on the people of Santa Cruz County would be significant, it is appropriate that the people of Santa Cruz County reserve for themselves, to the maximum degree possible, decisions on major new onshore facilities which support offshore oil and gas exploration and development.

SECTION 16.55.020 VOTER APPROVAL FOR ONSHORE FACILITIES.

1. No permit, entitlement, lease, or other authorization of any kind within the County of Santa Cruz which would authorize or allow the development, construction, or installation of any onshore facility necessary for or intended to support offshore oil or gas exploration or development shall be granted unless such authorization is approved by a majority vote of the qualified electors of Santa Cruz County, in a general or special election. For the purpose of this ordinance, the term "onshore facility" means any facility or land use of at least 20,000 square feet necessary for or intended to support offshore oil or gas exploration, or the development, production, storage, processing, or transportation of oil or gas resources produced or developed offshore, or other activities related to the development of offshore oil or gas resources.

2. When any person proposes to undertake the development within Santa Cruz County of any onshore energy facility related to the exploration or development of offshore oil or gas resources, and requests an amendment of the County's certified Local Coastal Program to facilitate such development, the local government determination required by Public Resources Code Section 30515 shall include a vote of the qualified electors of Santa Cruz County, in a general or special election, and no local government determination approving such an amendment shall be valid unless a majority of the electors voting in such election approve the amendment proposed. The Board of Supervisors of Santa Cruz County are hereby authorized and directed to enact any further ordinances or regulations necessary to give effect to this paragraph and specifically to require that the person seeking any such amendment to the County's certified Local Coastal Program pay all costs associated with the special or general election required herein.

SECTION 16.55.030 RECODIFICATION AND AMENDMENT. Nothing shall prevent the Board of Supervisors of Santa Cruz County from recodifying the substantive provisions of this ordinance from time to time to incorporate the provisions of this ordinance into the County Code in the most appropriate location. No substantive provision of this ordinance, however, shall be amended or repealed, except by a vote of the people.

SECTION 16.55.040 SEVERABILITY. If any portion of this ordinance is hereafter determined to be invalid, all remaining portions of this ordinance shall remain in full force and effect, and to this extent, the provisions of this ordinance are severable.

SECTION IV

Within thirty (30) days after the certification of the adoption of this referendum ordinance, the Board of Supervisors shall send a copy of this measure, with a letter stating the results of the election, to all of the following persons: The President of the United States, the United States Secretary of the Interior, the Chairperson of the United States Senate Committee on Energy and Natural Resources, the Chairperson of the United States House of Representatives Committee on Interior and Insular Affairs, the United States Senators and United States Representatives representing the State of California in the United States Congress, the Governor of the State of California, the California State Senator representing Santa Cruz County; and the California State Assembly Member representing Santa Cruz County.

SECTION V

This ordinance shall take effect as provided by law.

PASSED AND ADOPTED by the People of the County of Santa Cruz at a duly held election on June 3, 1986, by majority vote.

Approved as to form

/s/ Jonathan [Illegible]
Chief Deputy County Court

OIL DEVELOPMENT MORATORIUM

Adopted November 4, 1986

An ordinance which adopts a moratorium on the use, development or construction of crude oil and gas processing and support facilities.

Be it Ordained by the People of the City and County of San Francisco:

Section 1. Findings:

(a) The development of crude oil and gas processing and support facilities related to oil and gas drilling and production may create unacceptable risks to the quality of life, the environment, and the long-term economic well-being of San Francisco.

(b) Spills of crude oil from tankers, pipelines, refineries, storage facilities and staging areas would have serious environmental and economic consequences, including destruction of marine and avian life; fouling of beaches, estuaries and other bodies of water, degradation of scenic coastal resources; harm to fishing and tourist industries; danger of fire and explosion and creation of noxious odors. These dangers exist because spill containment and cleanup technologies are currently inadequate. Presently, only 5 to 15 percent of spilled oil has been recovered in past cleanup efforts, according to the federal government.

(c) On-shore disposal or storage of drilling muds, cuttings and produced water can result in serious degradation of water quality. These by-products of drilling activities can contain very substantial amounts of toxics, additives, oil and grease, and heavy metals, all of which, when introduced into the environment, caused serious adverse impacts to the health and welfare of the residents of San Francisco.

(d) San Francisco has been declared an air quality non-attainment area by the federal government and is already suffering from the adverse consequences of air pollution. The increased emission of pollutants, including volatile organic compounds, from activities connected with loading, unloading, ballasting, flushing, refining and storage operations would further degrade air quality.

(e) Oil and gas processing and support facilities would create increased levels of noise detrimental to the quality of life in San Francisco.

Section 2. Definitions.

"CRUDE OIL AND GAS PROCESSING AND SUPPORT FACILITIES" means:

(a) REFINERIES: Facilities that process, convert, refine and/or treat crude oil and gas, including facilities that separate crude oil and gas from sea water and dissolved chemicals;

(b) PIPELINES AND PIPELINE FACILITIES: Pipelines, pipeline landfalls and other related methods by which crude oil and gas are transported to crude oil and gas processing and support facilities;

(c) CRUDE OIL TANKER FACILITIES: Facilities, including marine terminals, for the purpose of accommodating the loading or unloading of crude oil and natural gas;

(d) STORAGE FACILITIES: Facilities for the purpose of storing crude oil and gas, including tank farms, or storing chemicals, drilling muds, cuttings, produced waters and other toxic materials used in the production of oil and gas products;

(e) STAGING AREAS: Facilities, yards and other areas designated for the purpose of transporting equipment to be used in or personnel employed in the construction or operation of oil drilling facilities;

(f) WASTE DISPOSAL FACILITIES: Facilities for the purpose of disposing of drilling muds, cuttings and produced water generated in the course of drilling oil and gas wells.

Section 3. Duration of Moratorium.

The moratorium set forth herein shall expire at the end of two (2) years after the effective date of this ordinance unless extended by further action of the Board of Supervisors.

Section 4. Conditions of Moratorium Penalty.

(a) No permit or license shall be granted for any use, development or construction of crude oil and gas processing and support facilities.

(b) The use, development or construction of any facility for the purposes defined in Section 2 shall be prohibited for the duration of this ordinance.

(c) The City and County of San Francisco may commence an action to enjoin any actual or threatened use, development or construction of any crude oil and gas processing and support facilities in violation of this ordinance.

(d) Any person using, developing or constructing any crude oil and gas processing and support facilities in violation of this ordinance shall be guilty of a misdemeanor. Any person convicted of a misdemeanor shall be punished by a fine of not more than five hundred dollars ($500) or six (6) months in jail, or both. Each use, development or construction of such facilities in violation of this ordinance shall constitute a separate and distinct offense.

Section 5. Planning Commission Study.

(a) The City Planning Commission shall study the need for permanent and comprehensive controls and shall prepare prohibitory legislation for the Board of Super-

visors to consider before the expiration of this ordinance or any duly enacted extension.

(b) Specifically, the City Planning Commission shall determine the following:

(1) The social, economic and physical impact of the use, development and construction of crude oil and gas processing and support facilities.

(2) The necessity for the absolute prohibition of the use, development and construction of crude oil and gas procesing and support facilities.

Section 6. Severability.

If any provision or clause of this ordinance or its application to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other chapter provisions, and clauses of this chapter are declared to be severable.

MEASURE G—TEXT

"ORDINANCE OPPOSING OIL AND GAS DRILLING OFF THE COAST OF CENTRAL AND NORTHERN CALIFORNIA

THE PEAPLE OF THE CITY OF MONTEREY DO ORDAIN AS FOLLOWS:

SECTION 1. *Title.*

The title of this Ordinance shall be: Ordinance Opposing Oil and Gas Drilling Off the coast of Central and Northern California.

SECTION 2. *Purpose.*

The purpose of this Ordinance is:

1. To express strong opposition to any oil or gas drilling off the coast of Central or Northern California.
2. To enable the Monterey City Council to take strong and effective action to oppose such oil and gas drilling.

SECTION 3. *Findings.*

The people of the City of Monterey make the following findings:

1. *Potential Adverse Community impacts of Oil Drilling Off the Coast of Central and/or Northern California:*

Environmental Degradation

(a) The development of crude oil and gas processing and support facilities related to oil and gas drilling and production may create unacceptable risks to the quality of life, the environment, and the long-term economic well being of Monterey.

(b) Spills of crude oil from tankers, pipelines, refineries, storage facilities and staging areas would have serious environmental and economic consequences; in-

cluding destruction of marine and avian life; fouling of beaches, estuaries and other bodies of water; degradation of scenic coastal resources; harm to fishing and tourist industries; danger of fire and explosion and creation of noxious odors. These dangers exist because spill containment and cleanup technologies are currently inadequate. Presently, only 5 to 15 percent of spilled oil has been recovered in past cleanup efforts, according to the federal government. Even small spills at Moss Landing have resulted in increased fatalities of marine birds and mammals.

(c) On-shore disposal or storage of drilling muds, cuttings and produced waters can result in serious degradation of water quality. These by-products of drilling activities can contain very substantial amounts of toxics, additives, oil and gases, and heavy metals, all of which, when introduced into the environment cause serious adverse impacts to the health and welfare of the residents of Monterey.

(d) The increased emission of pollutants, including volative organic compounds, from activities connected with loading, unloading, basting, flushing, refining and storage operations would degrade air quality.

(e) Oil and gas processing and support facilities would create increased levels of notes detrimental to the quality of life in Monterey.

(f) Environmental studies designed to evaluate the potential impacts of oil and gas exploration and extraction activities on sensitive marine and coastal resources are not yet complete. Until these studies are completed, it is impossible to weigh the risks of offshore oil development against the potential royalties or energy benefits.

(g) Environmental impact reports prepared to assess the affects of offshore drilling actuality predict large scale oilspills. In addition to the massive destruction of marine life, spills could reach the shoreline, destroying

habitat and reducing or eliminating seabird and other animal populations.

(h) The California sea otter is protected as a threatened species. Drilling and the associated spill potential could render this animal extinct—particularly because of the otter's sensitivity to oiling of its fur.

(i) Oil spill containment technologies do not exist for sea conditions with waves or swells exceeding seven feet, a common occurrence off-shore of Northern and Central California. Spills could not effectively be directed away from sensitive estuaries and bays where oil contamination would have the most devastating and long-lasting impacts.

Effects on the Monterey Economy

(j) Tourism is the City's largest industry and provides a large and growing base for many of the City's secondary industries. The quality of the City's beaches is the prime factor in the success of the tourist industry and oil and gas development anywhere off Central or Northern California could have a disastrous effect on City beaches and the tourist industry.

(k) Both fishing and agriculture continue to play an important role in the economy of the City of Monterey and the rest of Monterey County. Oil and gas exploration and extraction are in direct conflict with the local fishing industry. Degraded air quality resulting from oil and gas extraction activities causes fallout which reduces the quality and quantity of local agricultural production and associated processing industries.

Impact on Onshore Facilities

(l) Support facilities for offshore oil and gas development cannot be accommodated in the City of Monterey. The City's Local Coastal Plans contain no sites designated for heavy coastal dependent industries (the classification for onshore support facilities associated with off-

shore oil development). Any site in the City would have disastrous effects on the local economy and environment.

Problems in Department of the Interior Plans for Oil and Gas Exploration and Extraction

As exemplied in the five-year OCS Oil and Gas Leasing Plans, the Federal Department of the interior has:

1) Attempted to accelerate and increase oil and gas drilling before adequate environmental studies have been completed:

2) Not seriously considered adverse regional economic impacts;

3) Granted excessive authority to the Secretary of the interior;

4) Reduced the input of local agencies into final leasing decisions; and

5) Failed to consider the laws, goals and policies, of the State of California as required by the OCS Land Act.

SECTION 3.5. *Definitions.*

"CRUDE OIL AND GAS PROCESSING AND SUPPORT FACILITIES" means:

(a) REFINERIES: Facilities that process, convert, refine and/or treat crude oil and gas from sea water and dissolved chemicals;

(b) PIPELINES AND PIPELINE FACILITIES: Pipelines, pipeline landfalls and other related methods by which crude oil and gas are transported to crude oil and gas processing and support facilities;

(c) CRUDE OIL TANKER FACILITIES: Facilities, including marine terminals, for the purpose of accommodating the loading or unloading of crude oil and natural gas;

(d) STORAGE FACILITIES: Facilities for the purpose of storing crude oil and gas, including tank farms, or storing chemicals, drilling muds, cuttings, produced waters and other toxic materials used in the production of oil and gas products;

(e) STAGING AREAS: Facilities, yards and other areas designated for the purpose of transporting equipment to be used in or personnel employed in the construction or operation of oil drilling facilities;

(f) WASTE DISPOSAL FACILITIES: Facilities for the purpose of disposing of drilling muds, cuttings and produced waters generated in the course of drilling oil and gas wells.

SECTION 4. *Implementation.*

(a) Within one month of the Certification of the November 4, 1986 Municipal Election, the Monterey City Council shall request the President of the United States, the Secretary of the Interior, the Governor of the State of California, and Federal and State Legislative representatives of the City of Monterey to take whatever actions may be within their power to prevent the inclusion of waters off the Northern and Central California coastline as sites for well drilling in the five year OCS Oil and Gas Leasing Program, to overturn the five year OCS Plan for this area, and to include local government positions in any comments or review on this issue.

(b) No zoning changes to accommodate onshore support facilities for offshore oil or gas drilling shall be enacted without a vote of the people of the City of Monterey.

(c) The Monterey City Council shall use its resources to organize and help coordinate the efforts of other coastal governments to prevent oil and gas drilling off the coast of Central and Northern California.

(d) The Monterey City Council shall take any further steps within its legal powers to prevent oil and/or gas drilling off the coast of Northern or Central California.

SECTION 5. *Severability.*

If any provisions of this Ordinance are tried to be invalid, the remainder of the Ordinance shall not be affected thereby.

SECTION 6.

This Ordinance shall take affect as provided by Section 4013 of the Elections Code of the State of California."

ORDINANCE NO. 297

City of Morro Bay—ORDINANCE PROHIBITING OFFSHORE OIL DEVELOPMENT SUPPORT FACILITIES WITHIN THE CITY OF MORRO BAY

The people of the City of Morro Bay do ordain as follows:

Title 17 ZONING shall be Amended to Add a new Chapter 17.72 as follows:

17.72 *Ordinance Prohibiting Offshore Oil Development Support Facilities Within Morro Bay.*

17.72.010 PURPOSE

The purpose of this ordinance is:

To prevent Morro Bay from becoming an oil port, personnel-boat center or other logistical base for offshore oil operation.

17.72.020 FINDINGS

These findings are based on the City of Morro Bay's General Plan, Housing Element; EIR for Appropriative Water Rights in the Morro and Chorro Basin, May 1986; Quarterly and Annual Water Reports and other documents and information available and familiar to the City Council and the people of Morro Bay.

A. Environment Degradation

1. The City of Morro Bay is a small community with many unique and environmentally sensitive habitat areas. There are critical wetlands habitats for several rare and endangered plant and animal species. Morro Bay is a bird sanctuary established by the local Audubon Society.

2. The Estuary is among the last remaining natural estuaries along the coast of California and needs to be protected.

3. The City of Morro Bay is located in a physical setting with spectacular visual qualities. The visual resources of the community serve as valuable assets to both City residents and visitors.

4. Environmental studies designed to evaluate the potential impacts of oil and gas exploration and extraction activities on sensitive marine and coastal resources are not yet complete. Until these studies are completed, it is impossible to weigh the risks of offshore oil development against the potential royalties or energy benefits.

5. Environmental impact reports prepared to assess the effects of offshore drilling actually predict large scale oilspills. In addition to the destruction of marine life, spills could reach the shoreline, destroying habitat and reducing or eliminating seabird and other animal populations.

6. Oil spill containment technologies do not exist for sea conditions with waves or swells exceeding seven feet, a common occurrence off-shore of Central California. Spills could not effectively be directed away from sensitive estuaries and bays where oil contamination would have a most devastating and long-lasting impact.

B. Effects on Morro Bay Economy

1. The commercial fishing industry historically played a significant role in the development of Morro Bay, and continues to provide an economic source for the community as well as serving as an important tourist attraction. The California Coastal Act of 1976 requires Morro Bay to protect and, where feasible, upgrade commercial and recreational fishing facilities. The City has a policy of giving priority to commercial fishery in existing harbor facilities and in new harbor development.

2. Morro Bay is one of the last true fishing ports along the coast of California and as such should be preserved.

3. There is a shortage of suitable wharfage space, moorings and areas for expansion of the commercial fishing industry. Morro Bay Harbor cannot accommodate boats of the size generally associated with oil development service bases. To do so would require a total redesign and redevelopment of the Harbor and a tremendous amount of dredging. Lands available for additional wharfage are critical to the City's plans to develop facilities to meet the priority needs of the commercial fishing industry.

4. Due to the similarities in the requirements of commercial fishing boats and of oil support vessels, and because the oil industry can afford to pay more for the services required by their boats than can the fishing industry, commercial fishing would tend to be displaced.

5. Tourism is an important part of the City's economy with the quality of the beaches and the beautful visual resources being a prime factor in the success of the tourist industry. Oil and gas development anywhere off Central California could have disastrous effect on beaches within the City and the tourist industry.

C. Impact of Onshore Facilities

1. Support facilities for offshore oil and gas development cannot be accommodated in the City of Morro Bay. The City's Local Coastal Program contain no sites designated for onshore support facilities associated with offshore oil development. Any site in the City would have debilitative effects on the local economy and environment.

2. The City relies solely on finite groundwater basins currently in overdraft conditions, resulting in a complete building moratorium which has only been partially alleviated. There is not sufficient water to accommodate any oil support facilities in the City.

3. The Goals for 1986 in the General Plan, Housing Element, particularly for affordable housing are not

being met due to lack of water. Location of oil crews in Morro Bay would put greater demand for housing than could be met thereby displacing lower income residents.

D. Consistency

1. This ordinance is consistent with the City's General Plan.

2. This ordinance is consistent with the City's Local Coastal Program.

17.72.030 IMPLEMENTATION

There shall be no construction, reconstruction, operation or maintenance of any commercial or industrial facility within the City, including but not limited to business or personnel office, oil or gas storage facilities, pipe, drilling materials, or equipment repair or storage facilities, or any other aid or support, which operates directly or indirectly in support of any offshore oil or gas exploration, development, drilling, pumping or production; nor shall there be any construction, reconstruction, operation or maintenance of any pipeline within the City for the transmission of any oil or natural gas taken or removed from any offshore oil or gas drilling or pumping operations.

17.72.040 ZONING CHANGES

A. This ordinance shall not be amended nor repealed without a vote of the people.

B. No zoning changes to accommodate onshore support facilities for offshore oil or gas exploration, development, drilling, pumping or production shall be enacted without a vote of the people of the City of Morro Bay.

17.72.050 EFFECTS OF ADOPTION

A. Adoption of this ordinance by the people of the City of Morro Bay shall repeal that Initiative Ordinance

Number 283 adopted by the City Council of the City of Morro Bay on April 28, 1986 which became effective on May 28, 1986.

B. Adoption of this ordinance by the people does not amend nor rescind any consistent provisions of the General Plan, Local Coastal Program or Zoning ordinances but does strengthen and define such consistent provisions.

17.72.060 SEVERABILITY

If any section, sentence, clause, phrase, or part of this Ordinance is held to be invalid, the remainder of the Ordinance shall be given full effect consistent with the intent and purpose of the Ordinance.

CERTIFICATION

I, GARY A. NAPPER, City Clerk of the City of Morro Bay, do hereby certify that the foregoing is a true and correct copy of an ordinance (Measure C) adopted by a majority vote of the electors voting in the general municipal election held in the City of Morro Bay on the 4th day of November, 1986.

Dated: January 13, 1987

/s/ Gary A. Napper
GARY A. NAPPER
City Clerk
City of Morro Bay, California

ORDINANCE NO. 1071 (1986 Series)

RESOLUTION NO. 5900 (1986 Series)

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN LUIS OBISPO CALLING A SPECIAL MUNICIPAL ELECTION TO BE HELD IN SAID CITY ON TUESDAY JUNE 3, 1986, AND TO BE CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON SAID DATE FOR THE PURPOSE OF VOTING UPON A PROPOSED ORDINANCE WHICH WOULD ALLOW ONSHORE SUPPORT FACILITIES FOR OFFSHORE OIL AND GAS DEVELOPMENT ONLY WITH VOTER APPROVAL

WHEREAS, the Charter of the City of San Luis Obispo and state law provide for the City Council to place ordinances before the voters for consideration; and

WHEREAS, this Council has determined that the establishment of onshore support facilities for offshore oil and gas developmnet is a matter of grave concern to the people of this community; and

WHEREAS, the voters of this city should have the final authority to establish any zoning districts to allow such onshore support facilities.

NOW, THEREFORE, BE IT RESOLVED by the City of San Luis Obispo as follows:

1. There is hereby called and ordered in the City of San Luis Obispo, State of Califirnia, on Tuesday, June 3, 1986, a Special Municipal Election of the qualified electors of the city, to be consolidated with the Statewide Primary Elections, to vote upon an ordinance to amend the zoning regulations of the City of San Luis Obispo.

2. That the ordinance to be considered shall be as follows:

"BE IT ORDAINED by the People of the City of San Luis Obispo as follows:

SECTION 1. Chapter 17.92 is added to the Zoning Regulations of the City of San Luis Obispo.

"17.92.010 Onshore Support Facilities, Findings.

A. There is a strong likelihood that serious adverse effects will result from onshore processing, storage, or related service facilities supporting offshore oil and gas development authorized by the federal and state governments.

B. Such facilities would threaten the community's vital economy and environmental quality.

"17.92.20 Onshore Support Facilities Prohibited.

No onshore support facility for offshore oil or gas development shall be allowed or permitted within the City of San Luis Obispo until such time that the City Council proposes the inclusion of such uses in an appropriate zone district or districts, and such proposal has been approved by a vote of the people of the City of San Luis Obispo. For the purpose of this ordinance, the term "onshore support facility" means any activity or land use required to support directly the exploration, development, production, storage, processing, transportation, or related aspects of offshore energy resource extraction."

SECTION 2. The provisions of this ordinance are separable, and the invalidity of any phrase, clause or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 3. This ordinance shall go into effect in the time and manner provided for by state law.

3. The proposition to be voted on at said Special Election shall be set forth substantially as follows:

CITY MEASURE "D"

"ONSHORE SUPPORT FACILITIES. Shall the San Luis Obispo Municipal Code be amended to allow onshore support facilities for offshore gas and oil development only with voter approval?"

YES ☐
No ☐

4. The proposition shall pass only if a majority of the votes cast by voters for the proposed ordinance are "YES" votes.

On motion of Councilwoman Dovey, seconded by Councilman Settle, and on the following roll call vote:

AYES: Councilmembers Dovey, Settle, Griffin, Rappa and Mayor Dunin

NOES: None

ABSENT. None

the foregoing Resolution was passed and adopted this 4th day of February, 1986.

/s/ Mayor Ron Dunin
MAYOR RON DUNIN

ATTEST:

/s/ Pamela Voges
PAMELA VOGES
City Clerk

* * * * *

APPROVED:

/s/ [Illegible]
City Administrative Officer

/s/ Pamela Voges
PAMELA VOGES
City Clerk

/s/ [Illegible]
City Attorney

ORDINANCE NO. 86-09

AN ORDINANCE OF THE CITY OF SANTA CRUZ ADDING SECTION 24.06.090 TO THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO ZONING AMENDMENT TO ACCOMMODATE ON-SHORE SUPPORT FACILITIES FOR OFF-SHORE OIL AND GAS DRILLING

BE IT ORDAINED by the City of Santa Cruz as follows:

SECTION 1. Section 24.06.090 is hereby added to the Santa Cruz Municipal Code to read as follows:

"24.06.090 SUPPORT FACILITIES FOR OFF-SHORE OIL AND GAS DRILLING—SUBMISSION TO THE ELECTORATE

So long as Ordinance 85-70 (adopted by a vote of the people on November 5, 1985) remains in effect, no zoning changes to accommodate on-shore support facilities for off-shore oil and gas drilling shall be enacted without a vote of the people of the City of Santa Cruz."

SECTION 2. This Ordinance shall be in force and take effect thirty (30) days after its final adoption.

PASSED FOR PUBLICATION this 25th day of February, 1986, by the following vote:

AYES: COUNCILMEMBER—Levine, Wormhoudt, Sears-Williams, Ohio, Weed; Mayor Rotkin.

NOES: COUNCILMEMBER—None.

ABSENT: COUNCILMEMBER—None.

DISQUALIFIED: COUNCILMEMBER—None.

APPROVED /s/ M. E. Rotkin
Mayor

Attest /s/ [Illegible]
Acting City Clerk

PASSED FOR FINAL ADOPTION this 11th day of March, 1986, by the following vote:

AYES: COUNCILMEMBER—Levine, Wormhoudt, Sears-Williams, Ghio, Weed; Mayor Rotkin.

NOES: COUNCILMEMBER—None.

ABSENT: COUNCILMEMBER—Laird.

DISQUALIFIED: COUNCILMEMBER—None.

APPROVED /s/ M. E. Rotkin
Mayor

Attest /s/ Patricia M. Kenyon
City Clerk

ORDINANCE NO. 85-70

ORDINANCE OPPOSING OIL AND GAS DRILLING OFF THE COAST OF CENTRAL AND NORTHERN CALIFORNIA

The people of the City of Santa Cruz do ordain as follows:

SECTION 1. The title of this Ordinance shall be: Ordinance Opposing Oil and Gas Drilling off the Coast of Central and Northern California.

SECTION 2. *Purpose.*

The purpose of this Ordinance is:

1. To express strong opposition to any oil or gas drilling off the coast of Central or Northern California.

2. To enable the Santa Cruz City Council to take strong and effective action to oppose such oil and gas drilling.

SECTION 3. *Findings.*

The people of the City of Santa Cruz make the following findings:

1. *Potential Adverse Community Impacts of Oil Drilling Off the Coast of Central and/or Northern California:*

a. *Environment Degradation*

1) Environmental studies designed to evaluate the potential impacts of oil and gas exploration and extraction activities on sensitive marine and coastal resources are not yet complete. Until these studies are completed, it is impossible to weigh the risks of offshore oil development against the potential royalties of energy benefits.

2) Environmental impact reports prepared to assess the effects of offshore drilling actually predict large scale oilspills. In addition to the massive destruction of marine life, spills could reach the shoreline, destroying habitat and reducing or eliminating seabird and other animal populations.

3) The California sea otter is protected as a threatened species. Drilling and the associated spill potential could render this animal extinct—particularly because of the otter's sensitivity to oiling of its fur.

4) Oil spill containment technologies do not exist for sea conditions with waves or swells exceeding seven feet, a common occurrence off-shore of Northern and Central California. Spills could not effectively be directed away from sensitive estuaries and bays where oil contamination would have the most devastating and long-lasting impacts.

b. *Effects on the Santa Cruz Ecoonmy*

1) Tourism is the City's largest industry and provides a large and growing base for many of the City's secondary industries. The quality of the City's beaches is the prime factor in the success of the tourist industry and oil and gas development anywhere off Central or Northern California could have a disastrous effect on City beaches and the tourist industry.

2) Oil spills reaching the shoreline would leave tar on the City beaches. Even the small spills at Moss Landing have resulted in increased fatalities of marine birds and mammals, leaving carcasses to rot on City beaches.

3) Both fishing and agriculture continue to play an important role in the economy of the City of

Santa Cruz and the rest of Santa Cruz County. Oil and gas exploration and extraction are in direct conflict with the local fishing industry. Degraded air quality resulting from oil and gas extraction activities causes fallout which reduces the quality and quantity of local agricultural production and associated processing industries.

c. *Impact of Onshore Facilities*

1) Support facilities for offshore oil and gas development cannot be accommodated in the City of Santa Cruz. The City's Local Coastal Plans contain no sites designated for heavy coastal dependent industries (the classification for onshore support facilities associated with offshore oil development). Any site in the City would have disastrous effects on the local economy and environment.

2. *Problems in Department of the Interior Plans for Oil and Gas Exploration and Extraction*

a. As exemplified in the five-year OCS Oil and Gas Leasing Plans, the Federal Department of the Interior has:

1) Attempted to accelerate and increase oil and gas drilling before adequate environmental studies have been completed;

2) Not seriously considered adverse regional economic impacts;

3) Granted excessive authority to the Secretary of the Interior;

4) Reduced the input of local agencies into final leasing decisions; and

5 Failed to consider the laws, goals and policies, of the State of California as required by the OCS Land Act.

SECTION 4. Implementation

1. Within one month of the Certification of the November 5, 1985 Municipal Election, the Santa Cruz City Council shall request the President of the United States, the Secretary of the Interior, the Governor of the State of California and Federal and State Legislative Representatives of the City of Santa Cruz to take whatever actions may be within their power to prevent the inclusion of waters off the Northern and Central California coastline as sites for well drilling in the five year OCS Oil and Gas Leasing Program, to overturn the five year OCS Plan for this area, and to include local government positions in any comments or review on this issue.

2. No zoning changes to accommodate onshore support facilities for offshore oil or gas drilling shall be enacted without a vote of the people of the City of Santa Cruz.

3. The Santa Cruz City Council shall use its resources to organize and help coordinate the efforts of other coastal governments to prevent oil and gas drilling off the coast of Central and Northern California.

4. The Santa Cruz City Council shall take any further steps within its legal powers to prevent oil and/or gas drilling off the coast of Northern or Central California.

SECTION 5. Severability

If any provisions of this Ordinance are held to be invalid, the remainder of the Ordinance shall not be affected thereby.

SECTION 6. This Ordinance shall take effect as provided by Section 4013 of the Elections Code of the State of California.

PASSED AND ADOPTED by the people of the City of Santa Cruz, this 5th day of November, 1985, by the following vote:

YES—13,778

NO—3,152

Votes canvassed by the City Council on November 12, 1985.

Approved /s/ [Illegible]
Mayor

Attest /s/ Patricia M. Kenyon
City Clerk

Note 12/26/85: Change in number of "YES" votes was authorized by City Council action taken 12/10/85, item number 17.

APPENDIX K

43 USCS § 1332. Congressional declaration of policy; jurisdiction; construction

It is hereby declared to be the policy of the United States that—

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

(2) this Act shall be construed in such a manner that the character of the waters above Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts;

(B) the distribution of a portion of the receipts from the leasing of mineral resources of the

outer Continental Shelf adjacent to State lands, as provided under section 8(g) [43 USCS § 1337(g)], will provide affected coastal States and localities with funds which may be used for the mitigation of adverse economic and environmental effects related to the development of such resources; and

(C) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf;

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

(Aug. 7, 1953, ch 345, § 3, 67 Stat. 462; Sept. 18, 1978, P. L. 95-372, Title II, § 202, 92 Stat. 634.)

43 USCS § 1345. Coordination and consultation with affected State and local governments

(a) Recommendations regarding size, time, or location of proposed lease sales. Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

(b) Time for submission of recommendations. Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or after receipt of such development and production plan.

(c) Acceptance or rejection of recommendations. The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

(d) Finality of acceptance or rejection of recommendations. The Secretary's determination that recommenda-

tions provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act [43 USCS § 1349], unless found to be arbitrary or capricious.

(e) Cooperative agreements. The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this Act and other applicable Federal law. Such agreements may include, but need not be limited to, the sharing of information (in accordance with the provisions of section 26 of this Act [43 USCS § 1352]), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.

(Aug. 7, 1953, ch 345, § 19, as added Sept. 18, 1978, P. L. 95-372, Title II, § 208, 92 Stat. 652.)

APPENDIX L

S.CT. RULE 29.1 STATEMENT

LISTING OF NOIA MEMBER COMPANIES

Ackman, Fred
AGIP Petroleum Company
Alario & Associates, Inc.
Alaska Helicopters, Inc.
Alford, Rex
Aliance/The
Amboy Aggregates
Amdahl Corporation
Amerada Hess Corporation
American Dredging Company
American Industrial Partners
American Mobile Satellite Consortium
American Petroleum Institute
AMOCO Production Company
Ampol Exploration (USA) Inc.
Anadrill Schlumberger
ARCO Oil & Gas Company
Ashland Exploration, Inc.
Association of Diving Contractors
AT & T
Atlas Bradford
Atlas Wireline Services, Western Atlas Int'l
Atwood Oceanics, Inc.

Baker-Hughes, Inc.
Baker Oil Tools
Baker Performance Chemicals
Baker Sand Control
Baker Service Tools
Baroid Corporation
Baroid Drilling Fluids
Bell Helicopter Textron
Bethlehem Steel Corporation

Bettis Corporation
BHP Petroleum (American)
BJ Services
BP Exploration Company
Bollinger Machine Shop & Shipyard
Boswell, Henry O.
British Gas Services (U.S.), Inc.
British Gas Exploration America
Brooklyn Union Exploration Company
Broun Energy Services
Brown & Root & Asociated Companies
Bybee, Robert W.

C.A. Richards & Associates, Inc.
Camco, Incorporated
Cameron Iron Works, Inc.
Cameron Offshore Engineering Inc.
Canadian Marine Drilling Ltd.
Canadian Occidental Petroleum, Ltd.
Canal Barge Company
CBS Engineering, Inc.
Chevron U.S.A., Inc., Eastern Region
Chickasaw Distributors, Inc.
Chieftain International
Chiles Offshore Corporation
Citicorp North America
Cleaner Seas, Inc.
CNG Producing Company
Coastal Communications Company
Cochrane Subsea Acoustics, Inc.
Columbia Helicopters, Inc.
Communications Satellite Corporation
Conoco Inc.
Contel ASC
Cooling, Harold L.
Core Laboratories, Division of
Western Atlas International
Crawford Fitting Company
Cross Offshore Corp.
Crowley Maritime Corporation

Data-Com Incorporated
David P. Stang, P.C.
Davis-Lynch, Inc.
Delmar Systems, Inc.
Deutsch, Kerrigan & Stiles
Diamond M Company
Digicon, Inc.
Dive-Med International
Dolphin Titan International
Dowell Schlumberger
Dresser Industries, Inc.
Dresser-Rand Company
Dual Drilling Company

Earth Observation Satellite Company
Eastman Christensen Inc.
Economic Analysts Consulting Group
Edison Chouest Offshore
EIP Exploration, Inc.
Energy Insurance International
Energy Service Company, Inc.
Enron Corporation
Enserch Exploration
ERA Aviation, Inc.
Ernst & Young
ESA, Inc.
Etnyre, Robert
Eugene C. Smith, Inc.
Evans, James C.
Evergreen Helicopters
Exlog-Totco
Exxon Company, U.S.A.

First City, Texas-Houston, N.A.
FMC Petroleum Equipment Group
Forest Oil Corporation
Fredeman Shipyard
Fugro—McClelland Marine Geosciences
Funkhouser, Larry W.
Furuno U.S.A., Inc.

Galveston-Houston Company
GE Astro-Space Division
GECO Geophysical Company
Geostar Corporation
Gilbert Industrial Corporation
Global Marine Drilling Company
Global Marine, Inc.
Global Pipelines PLUS, Inc.
Grace Offshore Company
Grafton, George B.
Grant-Norpac Inc.
Great Lakes Dredge & Dock
GTS Corporation
Gulf Marine Fabricators, Inc.

H & H Oil Tool Co., Inc.
Halliburton Company
Halliburton Geophysical Services
Halliburton Logging Services
Halliburton Reservoir Services
Halliburton Services, Inc.
Harris Government Systems Sector
Heerema Engineering (US) Incorporated
Harbert Energy
Hornbeck Offshore Services, Inc.
Hose-McCann Telephone Company
Houston Helicopter
Hughes Tool Company
Hutchinson & Grundy
Hydril Company

IDB-A Communications
IMODCO Inc.
Intermarine Incorporated
Internat'l Assoc. of Drilling Contractors
Internat'l Assoc. of Geophysical Contractors
Internat'l Underwater Contractors

Japex (U.S.) Corp.
J.B. Coffman & Associates, Inc.

J.L. Taylor/International
John E. Chance & Associates, Inc.
Johnson & Higgins

Kerr-McGee Corporation
Kirlin, Campbell & Keating
Knowlton Company
Koomey, Paul

Laborde & Neuner
Lake Charles Diesel Inc.
Langston, J. Don
Lee C. Moore Corporation
Lesch, James R.
L.F. Gaubert & Company
Lockheed Missiles & Space Company
Louisiana Land & Exploration Company
LTV Energy Producto Company

Magnavox Advanced Products & Systems Co.
Mangold, John
Marathon LeTourneau Company
Marathon Oil Company
Marine Drilling Company
Marine Index Bureau
Markey Machinery Company
Marsh & McLennan, Inc.
Martin-Decker Division, Cooper Industries
Maxus Exploration Company
MBB Helicopter Corporation
McDermott Incorporated
McMahon, Don E.
McMoRan Oil and Gas
Measurement & Control Engineering
M-I Driling Fluids, Inc.
Mid-Continent Oil & Gas Association,
Louisiana Division
Midland Production Corporation
Milpark Drilling Fluids
Mobil Exploration & Production U.S.

Mobile Marine Radio Inc.
Mobile Satellite Corporation
Moran Towing Corporation
Murphy Oil Corporation

National Bank of Alaska
National-Oilwell
Navigare International
NCS International
Nelson Crews Company
Newfield Exploration
Newport News Shipbuilding
Nippon Oil
Noble Drilling Corporation
Norcen Energy Resources
North American Trailing Company

Ocean Drilling & Exploration Company
"Ocean Industry"—Gulf Publishing Company
Oceaneering International, Inc.
Oceanonics, Inc.
Oceanweather Inc.
Offshore Logistics, Inc.
"Offshore Magazine"—PennWell Publishing Co.
Offshore Marine Service Association
Offshore Navigation, Inc.
Offshore Tugs, Inc.
Oil & Gas Rental Services
"The Oil Daily"
Omega Marine Group/The
Omniflight Offshore, Inc.
Omnithruster, Inc.
Oryx Energy Company
Osprey Sub-Sea, Inc.
Otis Engineering Corporation
Otto Candles, Inc.
Oxy USA, Inc.

Panhandle Eastern Corp.
Parker Drilling Company

Pennzoil Company
Penrod Drilling Company
Peter Kiewit Sons', Inc.
Peterson Builders, Inc.
Petro-Marine Engineering, Inc.
Petrobras America Inc.
Petrofina Delaware, Inc.
Petrol Marine Corporation
Petroleum Communications, Inc.
"Petroleum Engineer International"
Petroleum Finance Company/The
Petroleum Helicopters, Inc.
Petroleum Information Corporation
Petroleum Management
Phillips Associates
Phillips Petroleum Company
Placid Oil Company
Pogo Producing Company
Pool Company—Gulf Offshore Operations
Porta-Kamp

Quadco of Alaska, Inc.

Reading & Bates Drilling Company
Reda
ResTech, Inc.
Retsco Inc.
Richard L. Johnson Company, Inc.
Robert W. Baird & Company, Inc.
Rosewood Resources, Inc.
Rowan Companies, Inc.

Sandefer Offshore Co.
Santa Fe Energy Company
Santa Fe International Company
Schlumberger Limited
Schlumberger Well Services
"Sea Technology"—Compass Publications
Seal Fleet, Inc.
Seamans, F. Augustus
Seaward International, Inc.

Seaward Marine Services, Inc.
SEDCO-Forex
Sercel Inc.
Shaffer
Shell Offshore Inc.
Shell Oil Company
Shell Western Exploration & Production
Siess, Charles P.
Simons & Company International
Smith International Inc.
Smith Offshore Exploration
SOPEC, Inc.
Sonat Exploration Company
Sonat Inc.
Sonat Offshore Drilling, Inc.
Sonsub, Inc.
Sooner Pipe & Supply Corporation
Southern Marine & Aviation Underwriters
Southern Natural Gas Company
Southwestern Energy Company
Spearin, Preston & Burrows, Inc.
Sperry—Sun Drilling Services
Stearns, Eugene
Stewart & Stevenson Services, Inc.
Stockham Valves & Fittings
Sub Sea International, Inc.
Sun Drilling Products
Syntron, Inc.

Taylor Energy Company
Teleco Oilfield Services Inc.
Teldyne Exploration Company
Teledyne Inc.
Teledyne Merla
Teeldyne Movible Offshore Inc.
Tenneco Gas Pipeline Group
Tenneco Oil Company
Terry Companies
Texaco USA

Texas American Positioning Service
Texas Commerce Bank Nat'l Association
Texas Gas Transmission Corporation
TGS Geophysical Company
Threet, Jack C.
Tidewater Inc.
Tidwell Gruy Engineering Corporation
TK Value & Manufacturing, Inc.
Toomey, E.J.
Total Minatome
Transco Exploration & Production
Transworld Drilling Company
Trinity Marine Group

Union Pacific Resources
Union Texas Petroleum Company
Universal Services
UNOCAL Corporation

VAM-PTS
Vann Systems
Varco International Inc.
Vetco Gray
Vinson & Elkins

Walter Oil & Gas Corporation
WATERCOM
Warren Electric
Weatherford International
Western Company of North America
Western Geophysical Division
of Western Atlas International, Inc.
Western Oceanic, Inc.
WIJSMULLER (U.S.A.), Inc.
WIMPOL, Inc.
Wintershall Oil & Gas Corporation

Zapata Corporation
Zapata Gulf Marine Inc.

LISTING OF WSPA MEMBER COMPANIES

AMOCO Production Company
ARCO Products Company
Ashland Oil Company
Atlantic Oil Company
BP America Inc.
Calnev Pipeline Company
Chemoil Refining Corporation
Chevron U.S.A. Inc.
Conoco Inc.
Drilling & Production Co.
Edgington Oil Company Inc.
Exxon Company, U.S.A.
Fletcher Oil & Refining
GATX Terminals Corporation
Golden West Refining Co.
Huntway Refining Company
Lloyd Management Corporation
M. H. Whittier Corporation
Manley Oil Company
Marathon Oil Company
McFarland Energy Inc.
The Mitchell Company
Mobil Oil Corporation
Oxy USA Inc.
Pacific Refining Company
Phillips 66 Company
Pennzoil E & P Company
Santa Fe Energy Resources Inc.
Santa Fe International Corporation
Santa Fe Pacific Pipeline, Inc.
Shell Western E & P Inc.
Seneca Resources Corporation
Porter Sesnon, Barbara Sesnon Cartan &
William Sesnon Jr.
Texaco U.S.A. Inc.
Tosco Corporation
Ultramar Refining

Union Pacific Resources Company
Unocal Corporation
U.S. Oil & Refining Company

(3)

Supreme Court, U.S.
FILED
DEC 26 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-805

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,

Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO, CITY OF MONTEREY,
CITY OF MORRO BAY, CITY OF
SAN LUIS OBISPO and CITY OF SANTA CRUZ,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LOUISE H. RENNE
City Attorney
ROBERT ALFRED KENEALEY
Assistant Chief
Deputy City Attorney
(Counsel of Record)
JOHN S. RODDY
Deputy City Attorney
Fox Plaza
1390 Market St., 6th Floor
San Francisco, CA 94102-5408
(415) 554-3938
Counsel for Respondent
City and County of
San Francisco

BEST AVAILABLE COPY

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

No. 90-805

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,

Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO, CITY OF MONTEREY,
CITY OF MORRO BAY, CITY OF
SAN LUIS OBISPO and CITY OF SANTA CRUZ,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

Respondent City and County of San Francisco (San Francisco) opposes the petition of Western States Petroleum Association and National Ocean Industries Association (Petitioners) for a writ of certiorari to review the judgment of the

United States Court of Appeals for the Ninth Circuit in this case, the opinion of which is reported at 905 F.2d 1287 (9th Cir. 1990). Petitioners have failed to present any appropriate basis for review of the decision of the Ninth Circuit Court of Appeals. San Francisco agrees with and fully supports the arguments for denial of the petition for writ of certiorari set forth in its co-respondents' opposition to the petition.

In addition to the reasons for denial set forth in the co-respondents' opposition brief, the petition should be denied with regard to San Francisco because the ordinance Petitioners have challenged has expired by its own terms. The challenged ordinance (see Petition for Writ of Certiorari, Appendix J, p. 164a) was enacted by the San Francisco electorate on November 4, 1986. The ordinance provided for a temporary moratorium on the development of certain facilities within San Francisco for a period of two years following enactment.

The ordinance, in accordance with its terms, was extended twice by legislative action of San Francisco's Board of Supervisors. The last action of the Board of Supervisors extended the ordinance to April 1, 1990. No further action was taken to extend the expiration date of the ordinance. Consequently, San Francisco's challenged ordinance expired by its own terms, thus rendering moot any questions as to its validity.

A challenge to the validity of a law becomes moot where that law has expired by its own terms or has been repealed. Burke v. Barnes, 479 U.S. 361, 363 (1987); Diffenderfer v. Central Baptist Church of Miami, Florida, Inc., 404 U.S. 412, 414-415 (1972) (per curiam).

In Burke, the Supreme Court considered a challenge to the "pocket veto" of a bill which lapsed by its own terms by the time the case reached the Supreme Court. The Court deemed the act a "dead letter" and held that "any issues concerning whether [the bill] became a law were mooted when that bill expired by its own terms." Burke, supra, 479 U.S. at 363-364.

Similarly, in the instant case, issues raised by Petitioners concerning the validity of San Francisco's ordinance were mooted when the ordinance expired by its own terms on April 1, 1990. Expiration of San Francisco's ordinance renders moot any questions as to the ordinance's validity. As in Burke, Petitioners fail to state a live case or controversy, as required by Article III of the Constitution.

San Francisco respectfully urges the Court to deny the petition for writ of certiorari.

Respectfully submitted,

LOUISE H. RENNE
City Attorney
ROBERT ALFRED KENEALEY
Assistant Chief
Deputy City Attorney
JOHN S. RODDY
Deputy City Attorney

By: Robert Alfred Kenealey
ROBERT ALFRED KENEALEY
Assistant Chief
Deputy City Attorney
(Counsel of Record)

Date Submitted: December 26, 1990

No. 90-805

Supreme Court, U.S.
FILED
DEC 26 1990
JOSEPH E. SPANIOL, JR.
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1990

WESTERN STATES PETROLEUM ASSOCIATION
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Petitioners,

v.

SONOMA COUNTY, ET AL.,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

*ROGER BEERS
KATHRYN LODATO
260 California Street
Suite 803
San Francisco, CA 94111
Telephone: (415) 391-2710
Counsel for Respondents Sonoma County, et al.

*NATHANIEL S.W. LAWRENCE
JOHANNA H. WALD
Natural Resources Defense Council, Inc.
90 New Montgomery Street
San Francisco, CA 94105
Telephone: (415) 777-0220
Counsel for Respondents Natural Resources Defense Council and League for Coastal Protection

JOHN K. VAN DE KAMP,
Attorney General of the State of California
ANDREA SHERIDAN ORDIN
Chief Assistant Attorney General
RICHARD M. FRANK
Acting Assistant Attorney General
*JOHN A. SAURENMAN
Deputy Attorney General
3580 Wilshire Boulevard
Los Angeles, CA 90010
Telephone: (213) 736-2046
Counsel for Respondent State of California, etc.

**Counsel of Record*

(Other Counsel on Inside Cover)

Bowne of Los Angeles, Inc., Law Printers. (213) 627-2200.

STEPHEN BITLER
Sonoma County Counsel's
Office

MICHAEL MURPHY
San Mateo County District
Attorney's Office

W. ALLEN BIDWELL
Monterey County Counsel's
Office

DWIGHT HERR
Santa Cruz County
Counsel's Office

JUDY SKOUSEN
Morro Bay City
Attorney's Office

JEFFREY G. JORGENSEN
San Luis Obispo City
Attorney's Office

JAMES LINDHOLM
RAYMOND BIERING
San Luis Obispo County
Counsel's Office

BILL CONNERS
Monterey City
Attorney's Office

JOHN BARISONE
Santa Cruz City
Attorney's Office

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Ninth Circuit erred in remanding claims relating to County of San Luis Obispo to the district court for a factual determination concerning mootness where there was insufficient evidence in the record to determine whether the project sponsor had moved to another county the single project which had been submitted to the County under the challenged ordinance, thus rendering moot the challenge to the ordinance based on that project?

2. Whether two trade associations can challenge the validity of two other local land use ordinances when neither of the associations nor any of their members have ever sought permits under the ordinances, where neither the associations nor any of their members have ever identified any property subject to the ordinances, and when neither the associations nor their members have invoked or exhausted available State administrative remedies?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF THE CASE	3
REASONS FOR DENYING THE WRIT	13
CONCLUSION	27

TABLE OF AUTHORITIES

CASES:	Page
Abbott Laboratories v. Gardner 387 U.S. 136 (1967)	15
Air Transport Ass'n of America v. Dept. of Transportation 900 F.2d 369 (D.C. Cir. 1990)	15
Board of School Comm'rs v. Jacobs 420 U.S.128 (1975)	22
Chicago & N.W. Transporation Co. v. Kalo Brick & Tile Co. 450 U.S. 311 (1981)	24
Commonwealth Edison Co. v. Montana 453 U.S. 609 (1981)	25
Consolidated Rail Corp. v. United States 896 F.2d 574 (D.C. Cir. 1990)	15
Exxon Corp. v. Governor of Md. 437 U.S. 117 (1978)	25
Federal Trade Commission v. Standard Oil 449 U.S. 232 (1980)	19
Franks v. Bowman Transportation Co., Inc. 424 U.S. 747 (1976)	21
Hicklin v. Orbeck 437 U.S. 518 (1978)	26
Hillsborough County v. Automated Medical Labs. 471 U.S. 707 (1985)	24
Hodel v. Virginia Surface Mining and Reclamation Association 452 U.S. 264 (1981)	16, 17, 19
Huron Portland Cement Co. v. City of Detroit 362 U.S. 440 (1960)	25

Lujan v. National Wildlife Federation
___ U.S. ___, 110 S.Ct. 3177 (1990) 17
Macauley v. Waterman Steamship Corp.
327 U.S. 540 (1946) 19
MacDonald, Sommer & Frates v. Yolo County
477 U.S. 340 (1986) 16
Pacific Gas and Electric Company v. State Energy Resources Conservation and Development Commission
461 U.S. 190 (1983) 20, 23, 25, 26
Public Utilities Commission v. United States
355 U.S. 534 (1958) 19
Ray v. Atlantic Richfield Co.
435 U.S. 151 (1978) 23
Sosna v. Iowa
419 U.S. 393 (1974) 22
Toilet Goods Association v. Gardner
387 U.S. 158 (1967) 18
United States Parole Comm'n v. Geraghty
445 U.S. 388 (1980) 22
Valley Forge Christian College v. Americans United for Separation of Church and State
454 U.S. 464 (198) 21
Warth v. Seldin
422 U.S. 490 (1975) 17
Wilderness Society v. Griles
824 F.2d 4 (D.C. Cir. 1987) 17
Williamson County Regional Planning Commission v. Hamilton Bank
473 U.S. 172 (1985) 16

STATUTES:

Public Law 97-100, § 109,
95 Stat. 1404 8
Public Law 97-374, § 108,
96 Stat. 1982 8
Public Law 98-146, § 113,
97 Stat. 938 8
Public Law 98-473, § 111,
98 Stat. 1855-56 8
Public Law 99-190, § 111,
99 Stat. 1243-44 8
Public Law 99-591, § 111,
100 Stat. 3341-261 to 3341-262 8
Public Law 100-446, § 111,
102 Stat. 1801 8
Public Law 101-121, § 112 8
Public Law 101-512, § 110 10

Coastal Zone Management Act
16 U.S.C. §§ 1451, et seq. 7

Outer Continental Shelf Lands Act:
43 U.S.C. § 1332(5) 25

California Public Resources Code:
§ 30000, et seq. 6
§ 30514 6
§ 30515 ..... 6, 7
§ 30600 6
§ 30603 7

LEGISLATIVE MATERIALS:

H.R. No. 95-590, 95th Cong., 2d Sess. 166 (1977) 25

MISCELLANEOUS:

26 Weekly Compilation of Presidential Documents 1006 (June 26, 1990) 10

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1990

No. 90-805

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Petitioners,
v.
SONOMA COUNTY, ET AL.
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Sonoma County, *et al.*, oppose the petition for certiorari to review the Ninth Circuit's affirmance of the district court's judgment.[1]

---

[1] This brief is filed on behalf of all of the defendants and intervenors identified in the Petition at ii, with the exception of the City and County of San Francisco. For the Court's convenience, we note at the outset citation forms that are used throughout this Brief. References to the Petition for a Writ of Certiorari of the Western States Petroleum Association and the National Ocean Industries Association (hereafter collectively referred to as "WSPA") are cited (continued...)

INTRODUCTION

In reviewing the petition for certiorari of the Western States Petroleum Association and the National Ocean Industries Association, it is important to recognize what is really at issue. WSPA initially filed this action as a challenge to thirteen ordinances of California communities. The district court dismissed the action as to ten of the ordinances on the basis, *inter alia*, that WSPA's challenge was not ripe and that WSPA had failed to exhaust available state administrative remedies. A partial final judgment was entered, and WSPA appealed the district court ruling to the Ninth Circuit. The Ninth Circuit found that the challenge to nine of the ten ordinances was not ripe based on Congress' imposition of a moratorium on the leasing of tracts offshore California. As to one ordinance, the Ninth Circuit found that the record raised a question whether the challenge was moot, and on that basis remanded to the district court for factual findings on mootness.

WSPA has now petitioned this Court to review the rulings of the Ninth Circuit. As to seven of the ten ordinances, WSPA does not challenge the Ninth Circuit's ruling that the actions were not ripe because Congress has barred future leasing. Pet. at 12. Thus, WSPA's petition seeks review of the Ninth Circuit's decision regarding only three ordinances: the County of San Luis

---

[1](...continued)
as "Pet. at _____." All references to the opinions below are to those opinions as reproduced in the appendix to the petition and will be cited as "Pet. at _____a." References to the Excerpts of Record and the Supplemental Excerpts of Record in the Ninth Circuit appear as "ER #__" and "Supp. ER #__" respectively, and references to the Clerk's Record in the district court appear as "CR #__."

Obispo, the City of San Luis Obispo and the City of Morro Bay.

As to the County of San Luis Obispo, WSPA asserts that the Ninth Circuit erred in remanding to the district court for a determination whether the claim concerning that county's ordinance was moot. As to the Cities of San Luis Obispo and Morro Bay, WSPA asserts that the determination that the action is not ripe is error even though WSPA never alleged or proved that any one of its members had ever sought a permit for a facility from either of these cities.[2] Nor did WSPA allege or prove that any of its members owned property in either of these cities which might be affected by the ordinances. Nor did WSPA allege or prove that any of its members had invoked or exhausted available State administrative remedies for the siting of such facilities.

This is thus a case in which WSPA seeks a purely advisory opinion from this Court concerning two ordinances under which no permits have ever been sought and a third ordinance where there once was an application but that application may now be moot. Respondents submit that this case is too premature and too speculative to justify this Court's review.

STATEMENT OF THE CASE

This action began as a scatter-shot attempt to obtain an advisory opinion invalidating the separate ordinances adopted by thirteen different California cities and

---

[2] In its petition, WSPA states, "Accordingly, the judgment was affirmed without comment as to the cities of San Luis Obispo and Morro Bay, *where there are no permit applications pending.*" Pet. at 13; emphasis added.

counties. Petitioners asserted that these ordinances were "intended to prevent the development of federal offshore oil and gas leases." Pet. at 5. The ordinances do not themselves regulate any offshore activities, such as the construction of drilling platforms or the drilling for oil and gas production. Rather, as the Ninth Circuit observed, they are local "land use ordinances." Pet. at 3a. They regulate the construction within their own jurisdictions of any terminals, refineries, storage and processing units, and other facilities (referred to hereinafter as "onshore petroleum facilities")[3] that may be related to offshore oil and gas development, whether conducted in state or federal waters offshore of these jurisdictions.[4]

Petitioners are two trade associations who themselves will never be involved directly in sponsoring any projects which may be subject to these ordinances. Nor have

---

[3] Beyond this general description, the ordinances differ significantly in their wording and possible application. See Pet. at 4. The ordinance adopted by the County of San Luis Obispo simply requires a local referendum relating to approval of onshore petroleum facilities. The ordinance adopted by the City of San Luis Obispo similarly requires a referendum but only in those instances when a "zone change" is proposed to provide for the siting of such facilities. Finally, the ordinance adopted by the City of Morro Bay expressly prohibits such facilities as part of a local coastal plan adopted under the California Coastal Act. In Morro Bay and the City of San Luis Obispo onshore petroleum facilities or other forms of heavy industrialization were also not permitted under zoning and plans that preceded the adoption of these ordinances.

[4] By their terms, the ordinances apply equally to onshore facilities to support development in state waters as well as in federal waters. Evidence below demonstrated that concerns over onshore facility siting to support development in state waters were justified. *See*, Sanders Dec. [ER #65] at 5-7.

petitioners identified a single onshore project which is pending or even planned for future siting in any of these jurisdictions. Not a single oil company which might propose such a project in the future has joined this suit.

Without waiting to see how any such project would be treated under these ordinances, petitioners claimed that the ordinances were preempted by federal law and violated the commerce clause, and other constitutional provisions. The district court's opinion, as amended on appeal by the Ninth Circuit, held that petitioners' constitutional challenges to ten of these ordinances were not ripe for review.[5] It held that further evidentiary proceedings would be required to review the commerce clause claims against three ordinances, but petitioners have chosen not to pursue those claims further at this time.[6]

In addition to holding ten of the ordinances "unripe" for review in advance of their application, the district court also ruled that petitioners had failed to exhaust the further administrative remedies that were available under California law for the siting of onshore energy facilities. Pet. at 33a-35a. Thus while petitioners complain in this

---

[5] After holding the challenges to these ten ordinances as unripe for review, the district court then held that those ordinances did not violate any constitutional principles. Pet. at 47a. On WSPA's petition for rehearing, the Ninth Circuit vacated the district court's decision on the merits (Pet. at 12a) leaving no opinion by any court on WSPA's constitutional claims.

[6] In the district court, Petitioners stipulated to a stay of the action with respect to these three ordinances, pending the appeal of the other ordinances. Pet. at 54a, 56a. The three ordinances were those adopted by the Cities of Oceanside and San Diego and the County of San Diego. Pet. at 44a.

Court about the difficulties that they believe their member companies may face in "winning" a referendum in these jurisdictions, they fail to mention that even if that ever came to pass, under California law the State rather than local voters has the final say on whether such energy facilities will be built in these communities.

In the main, the ordinances in the appeal to the Ninth Circuit are considered to be amendments to "Local Coastal Programs" adopted under the California Coastal Act -- whether they expressly recite that fact or not.[7] The Coastal Act specifically provides for appeal to the State Coastal Commission in the event that "energy facility developments" in the coastal zone are turned down at the local level. Section 30515 of the Public Resources Code states that any person "proposing an energy facility development" may request that a local government amend its certified local coastal program to accommodate such facility, and that "[i]f the local

---

[7] The California Coastal Act, California Public Resources Code Sections 30000 *et seq.*, passed in 1976, sets general standards for protection of the coastal zone and required developers to secure permits from the California Coastal Commission. Cal. Pub. Res. Code § 30600. It contemplated that this permit authority would be turned over to coastal cities and counties when they had developed "Local Coastal Programs" or "LCP's", which had received Commission approval. *Id.* Section 30514 of the Public Resources Code allows local governments thereafter to amend these local coastal programs "and all local implementing ordinances, regulations and other actions." For example, the ordinance of Morro Bay was adopted as a clarification of its Local Coastal Program. Pet. at 177a (Section 17.72.020.D); *id.* at 178a (Section 17.72.050.B). Amendments of LCPs cannot take effect until the State Commission approves them. Cal. Pub. Res. Code § 30514(a). The San Luis Obispo County ordinance was submitted to and approved by the Coastal Commission under the Coastal Act.

government does not amend its [LCP], such person may file with the Commission a request for amendment." In response, the Commission must determine, *inter alia*, whether the energy facility development turned down at the local level meets "a public need of an area greater than that included within the certified [LCP]" of the locality.[8] Cal. Pub. Res. Code § 30515.

In addition, in those instances where the LCP would allow for the siting of such a facility but it is rejected in a local referendum (or if local officials deny a permit), the Coastal Act provides that the applicant may appeal that decision to the Coastal Commission. Cal. Pub. Res. Code § 30603. This independent right of appeal thus supplements the remedy under Section 30515, which is available in case the LCP already prohibits the onshore petroleum facility. Of course, no member of the petitioners has yet pursued these administrative remedies, so it is impossible to say what decision the Coastal Commission would render if that were to occur. Yet, as the district court observed, "[t]he purpose behind the statute allowing resort to the coastal commission for amendments to the LCP to allow development of a particular type of energy facility is to address precisely the type of issue raised by plaintiffs." Pet. at 35a.

---

[8] In this respect, the Coastal Commission's oversight of local decisions on onshore petroleum facilities under the challenged ordinances is part of a structure sanctioned by the federal Coastal Zone Management Act ("CZMA"), 16 U.S.C. Sections 1451 et seq. The Coastal Act was funded and approved under the CZMA, as a program which provides "for adequate consideration of the national interest" in the siting of facilities in the coastal zone. Pet. at 39a. In the court below, petitioners themselves acknowledged that the ordinances constitute a change in the California Coastal Management Program approved under the federal Coastal Zone Management Act. Plaintiffs' Memo. (dated 9/28/87) at 30 [CR #14].

Petitioners appealed the district court's rulings with respect to the ten ordinances. However, prior to the decision of the Ninth Circuit, petitioners moved to dismiss their action against seven of the ordinances on the grounds that it had been rendered moot by Congress' adoption of a one year moratorium on lease sales then planned for the federal Outer Continental Shelf ("OCS") off California. Public Law 101-121, § 112. Petitioners stated that the moratorium had "the effect of making contingent the timing and occurrence of previously scheduled lease sales" and that "the controversy we have raised here may well arise again, *but it is not here now*."[9]

In fact, the moratorium adopted in 1989 was merely the most recent in a string of Congressional moratoria on leasing off the California coast adopted in the past decade.[10] These moratoria confirm that petitioners claims had been "unripe" since the inception of the suit -- not that previously "concrete cases or controversies" had suddenly been rendered "moot."

---

[9] Plaintiffs' Memorandum of Points and Authorities In Support of Motion to Vacate Judgment and to Dismiss Appeal as Moot, etc. (November 30, 1989), at 4 (emphasis added).

[10] During the 1980s, Congress imposed leasing moratoria for OCS tracts offshore of all of the local governments involved in the appeal below. *See*, Public Law 97-100, § 109, 95 Stat. 1404; Public Law 97-374, § 108, 96 Stat. 1982; Public Law 98-146, § 113, 97 Stat. 938; Public Law 98-473, § 111, 98 Stat. 1855-56; Public Law 99-190, § 111, 99 Stat. 1243-44; Public Law 99-591, § 111, 100 Stat. 3341-261 to 3341-262; Public Law 100-446, § 111, 102 Stat. 1801. The moratoria covered different areas in different years, but at one time or another, tracts offshore all of the local governments were affected, thus preventing any leasing from occurring offshore California since 1984.

In its decision, the Ninth Circuit observed that "[i]t remains to be seen whether any of the leases remaining off the California coast will ever be offered for sale." Pet. at 17a. If not, "the new ordinances will never come into play." *Id.* The Ninth Circuit held that petitioners' claims were unripe because "the entire case is far too speculative for resolution by a federal court" and "[f]urther delineation of the facts is necessary to shape the issues for review." *Id.*

On this basis, the Court of Appeals affirmed the judgment of the district court that the claims relating to the ordinances, except that of the County of San Luis Obispo, were unripe. As to the County of San Luis Obispo, the Ninth Circuit found that there were factual questions surrounding the status of the single project which had been pending there; thus that aspect of the case was remanded to the district court for further factual development. Pet. at 18a.

Petitioners now contend in this Court that these ordinances somehow stand in the way of their member companies' efforts to develop the OCS oil and gas reserves off the California coast. They point to the supposed vast reserves off the California coast and the urgent need for these resources in the wake of the Persian Gulf crisis. Pet. at 13-15. Yet, they fail to advise the Court that after the Ninth Circuit's decision below, Congress and the President issued an even more sweeping and extended moratorium of OCS leasing off the California coast. On June 26, 1990, President Bush announced the cancellation of all pending lease sales off California, and stated that "more than 99 percent of the California coast will be off limits to oil and gas leasing

and development until after the year 2000."[11] Even with respect to the remaining, limited areas, the President made it clear that no lease sale would be held until 1996 and then only if further environmental studies satisfactorily addressed concerns related to these tracts.[12] The President's announcement was given additional force in November of this year when Congress issued a further one year moratorium on "the conduct of offshore leasing and related activities" in the same areas. Public Law 101-512, § 110.

The uncertainty regarding offshore leasing has always been only one of a series of contingencies affecting the siting of onshore support facilities that WSPA's members may some day propose. The others include: (1) whether offshore oil and gas exploration and development will occur adjacent to the jurisdictions sued herein; (2) whether there will be sites available for onshore facilities outside of the jurisdictions sued herein; (3) whether particular oil companies will in fact propose onshore facilities in each of these jurisdictions; (4) whether the voters will approve such facilities in those jurisdictions requiring voter approval; and (5) whether the State will override any local denial that may occur.

---

[11] 26 Weekly Compilation of Presidential Documents 1006 (June 26, 1990). The pending lease sales which were canceled as a result of this announcement included Sale Area 91, off the coast of northern California; Sale Area 119, off the coast of central California; and the vast majority of Sale Area 95, off the coast of southern California.

[12] *Id.*

In their petition for certiorari, petitioners focus largely on the San Luis Obispo County ordinance.[13] They point to the existence of some tracts previously leased off this County, and argue that their member companies have further needs for unspecified onshore sites in this County. However, WSPA identified no currently proposed onshore project or permit application in this county, or in any of the other jurisdictions. Thus, the prior leasing does not alter the string of contingencies described above, or otherwise reduce the uncertainties in the future concerning the application and effects of this ordinance.

The Ninth Circuit's remand to the district court of petitioner's claim regarding the San Luis Obispo ordinance occurred because one of WSPA's member companies, Shell Oil Company ("Shell"), at one time had proposed onshore facilities for siting in that county to serve an existing OCS lease. Pet. at 18a. The project was rejected in a referendum held under the county's ordinance, and Shell then submitted new applications to the County.

However, before the County began processing the second applications, Shell apparently decided to site its onshore facilities elsewhere. As the Ninth Circuit noted:

> The record suggests that Shell has abandoned the San Luis Obispo project, that no other development has

---

[13] Petitioners also seek certiorari regarding ordinances adopted by two cities in San Luis Obispo County. However, there have never been any proposals for projects that would be subject to the ordinances in these cities, San Luis Obispo and Morro Bay. Indeed, in their petition, they admit that no permits are pending in these jurisdictions. Pet. at 13. Thus, petitioners not only failed to exhaust their administrative remedies, they have not even invoked the administrative process.

> been proposed, that a new vote was never held, and that the offshore San Luis Obispo lease is now being serviced from onshore facilities in Santa Barbara County. Although the record suggests that the controversy involving Shell's lease may be moot, we cannot be certain because the relevant facts are not adequately developed in the record before us. Accordingly, we remand the question of mootness with respect to Shell's lease offshore San Luis Obispo County.

Id. at 8a. The project was reconfigured to fit entirely within the coastal zone after the election held there,[14] but since it abandoned the project in San Luis Obispo County, Shell never had occasion to seek an override of the local decision from the Coastal Commission.

Finally, contrary to WSPA's assertions, not a single one of the ordinances states that its *regulation of onshore petroleum facilities* is "intended to prevent the development of federal offshore oil and gas leases." Pet. at 5. Rather, the ordinances are clearly motivated by a concern for the environmental impact upon these local jurisdictions of onshore petroleum facilities.[15] There are a number of areas along the California coast which have extensive onshore petroleum facilities and other heavy

---

[14] See *von Reis* Dec. [ER #107] at 5-6.

[15] The San Luis Obispo ordinance, on which WSPA focuses, in the words of the district court, "clearly state[s] that [its] only named purpose is the protection of the local environment, natural resources and economy." The two others, adopted by the Cities of Morro Bay and San Luis Obispo, respectively "state a mixed purpose, protection of the local environment and expression of opposition to the proposed drilling on the outer continental shelf" and "state no purposes." Pet. at 43a, 44a.

industrialization. The record in the district court demonstrated that there are ample sites that have been reserved for such facilities along the California coast in areas not subject to the challenged ordinances.[16] The ordinances which are the subject of this action were adopted in jurisdictions where the coastline is largely or entirely devoid of any heavy industrial development.[17] Thus, these communities have a legitimate police power interest in determining whether and where to accept industrial development in the future and in determining the manner in which the community itself will develop.

REASONS FOR DENYING THE WRIT

1. Petitioners' concerns about the "national interest" are neither an appropriate subject for this Court's plenary review nor a reason for otherwise sidestepping the limitations of Article III. Regardless of how much total oil there may be in the OCS off California,

---

[16] There currently exist sites for onshore support facilities in Santa Barbara, Ventura, and Los Angeles Counties in addition to a number of sites in Northern California. Travis Dec. [ER #62] at 10.

[17] The declarations filed by respondents below, never contradicted by petitioners, showed that these areas are unsuitable sites for onshore petroleum facilities. *See,* Def. Statement of Genuine Issues, para. 21 (citing declarations) [Supp. ER at 19]. Indeed, in many of the jurisdictions sued herein the capacity of various public services, such as water, sewage, and transportation, which would be required to serve any such onshore petroleum facilities, is limited and insufficient to support such facilities. *Id.*, para. 22. Moreover, the declarations filed below showed that in the jurisdictions sued herein, the siting of onshore petroleum facilities would have significant adverse impacts on the local economy, including such matters as tourism, fishing, and agricultural uses. *Id.*, para. 25.

Congress has *not* "stated in the plainest of terms that the national policy requires development of those resources." Pet. at 14. Nor has the Secretary of the Interior been "authorized and directed to conduct [lease] sales on the California OCS. *Id.* Nor does "Iraq's invasion of Kuwait" (*id.* at 15), suggest a need for *this Court's* immediate attention to this matter.

In fact, Congress has prohibited leasing of the OCS offshore California since 1984; President Bush this year placed 99 percent of the California OCS off limits to leasing through the year 2000; and Congress thereafter specifically *prohibited* the Secretary of the Interior from conducting any lease sales or pre-leasing activity. The President's policy has *not changed* in the wake of "Iraq's invasion of Kuwait." Congress' moratorium was passed, and signed by the President, three months *after* that invasion. *See, supra,* at 9-10.

Clearly, petitioners' grievances with *these national policies* cannot be addressed in this Court. Yet, it is these policies -- not the three local land use ordinances challenged herein -- which stand in the way of petitioners' aspirations for development of the California OCS. Not only do these national policies provide no basis for evading the limitations of Article III in this case, they confirm how unripe petitioners' claims are.

2. The petition also presents no occasion for this Court to resolve any conflict between the Ninth Circuit's decision and that of any other circuit, or of this Court. Petitioners do not seriously argue that there is any

conflict in the circuits.[18] Their principal grievance with the Court of Appeals' decision appears to be its refusal to adjudicate the merits of their claims relating to the ordinance in San Luis Obispo County, but they cannot point to any respect in which that court, in suggesting that their claims relating to that ordinance "may be moot," departed from any decisions of this Court.[19]

---

[18] WSPA cites two cases from the District of Columbia Circuit which purportedly held that if a case satisfies the *Abbott Laboratories'* "fitness" test for ripeness, the court need not consider whether the claimant would suffer any hardship from postponing review. *Consolidated Rail Corp. v. United States*, 896 F.2d 574 (D.C. Cir. 1990); *Air Transport Ass'n of America v. Dept. of Transportation*, 900 F.2d 369 (D.C. Cir. 1990). WSPA suggests, without explanation, that the decision below was "in conflict with that view." Pet. at 25-26 n.4. There is clearly no such conflict here because the Ninth Circuit found that "appellants have not satisfied the fitness requirement." Pet. at 7a.

[19] Instead, they contend that the Ninth Circuit's *application* of the "mootness" doctrine was "inconsistent" in its treatment of areas for which no leasing is planned, as opposed to areas in which leasing has already occurred. Pet. at 22. What they ignore is that the Ninth Circuit's decision as to all areas except the County of San Luis Obispo was fundamentally grounded not on the doctrine of mootness but on the fact that petitioners' claims were "unripe" in advance of application of the ordinances. The lower court singled out the San Luis Obispo ordinance as possibly being "moot" only because petitioners had attempted to make that claim appear ripe by reference to a single application by Shell Oil Company which had been turned down in a referendum. The Ninth Circuit apparently concluded that it may be unnecessary to determine whether that claim was made ripe by that single event because of Shell's subsequent decision for its own reasons to site the project elsewhere. For this reason, the Ninth Circuit noted that "the controversy involving Shell's lease may be moot," and remanded to the district court for further factual findings. Pet. at 18a. Absent Shell's

(continued...)

3. The fundamental determination in the lower courts -- that petitioners' claims against the ordinances are not ripe -- presents no occasion for this Court's review, particularly when the basis upon which WSPA seeks review departs so dramatically from traditional Article III jurisprudence. The "error" of the Ninth Circuit's decisions in WSPA's view is that "it was necessary that there be *a current 'proposed development' pending in San Luis Obispo County* before the County's ordinance could be challenged." Pet. at 6-7 (emphasis added). Elsewhere they complain that "those who hold leases from the United States offshore of San Luis Obispo County do not have a ripe controversy *if they have not yet reached the stage of an actual project submitted to the County.*" *Id.* at 13 (emphasis added).

Thus WSPA seeks a purely advisory opinion. Yet WSPA does not cite a single case in which someone has been allowed to challenge a local land use ordinance before its final application and, indeed, with no project pending or even any concrete plans therefor.[20] In *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 264 (1981), this Court refused to entertain even as a "facial challenge" a variety of constitutional challenges brought by a trade association and others to

---

[19](...continued)
application, the case otherwise remains in the posture that it was before: none of the ordinances has ever been applied and none may ever be applied in the future.

[20] In prior decisions, this Court has held that there are even more stringent barriers than this to a federal court's adjudication of other kinds of constitutional claims directed at local land use ordinances. *See, e.g., Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 186 (1985); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340 (1986).

a federal statute that had never been applied to the association's members. The Court held these challenges unripe because the plaintiffs had "made no showing in the district court that they own tracts of land that are affected by this provision" (*id.* at 296 n.37) or that they had "been applied to appellee or any other private land owner in Virginia" (*id.* at 294 n.36). *See also, id.* at 304.[21] In *Warth v. Seldin*, 422 U.S. 490, 515-16 (1975), this Court held that an association had no standing to challenge the constitutionality of a town zoning ordinance excluding persons of low and moderate income from living in the town where the complaint did not allege that any of the association's members had made any effort involving the town, had taken any steps toward building there, or had any dealings with town officials.

Most recently, in rejecting challenges to policies or regulations apart from their application to specific parcels of land in a fashion harmful to plaintiffs, this Court emphasized that, absent Congressional direction to the contrary, review of regulations as applied on a case-by-case basis "is the traditional, and remains the normal, mode of operation of the courts." *Lujan v. National Wildlife Federation*, ___ U.S. ___, 110 S.Ct. 3177, 3191 (1990).[22] Here, WSPA seeks review of three ordinances

---

[21] In *Hodel*, the Court did allow a facial challenge to the statute as an unconstitutional exercise of *Congress' powers* under the Commerce Clause. But the issue was simply the question of the extent of Congress' plenary authority under the Constitution. 452 U.S. at 275-76.

[22] *See also, Wilderness Society v. Griles*, 824 F.2d 4, 15-17 (D.C. Cir. 1987) (the court denied standing to national environmental groups challenging a Bureau of Land Management policy which was alleged to result in a transfer of greater amounts of Alaska land (continued...)

even though it is conceded that no permits have ever been sought pursuant to two of the ordinances, and as to the third ordinance a permit once was sought, but the permit applicant may have abandoned its application without exhausting its remedies and moved the project to another area, thus making moot any potential dispute.[23]

4. There is an even more fundamental reason why the petition must be denied. In their impatience to get to court, the petitioners not only seek to avoid traditional constraints on cases or controversies but also overlook administrative remedies waiting at hand for resolving their grievances short of litigation. In effect, petitioners ask that this Court ignore the outcome of a future referendum required by some of the ordinances and the availability of "administrative relief" under State law. If any of petitioners' members were denied project approval in a local referendum, they would have an automatic right of appeal to the Coastal Commission. If those

---

[22](...continued)
from federal ownership to the State or natives because plaintiffs did not point to any specific lands that they wished to use that were to be transferred).

[23] WSPA's excuses for departing from these Article III limitations are misplaced. Obviously the "validity of an ordinance" does not automatically present the pure issue of law which petitioners claim makes the matter *per se* ripe. Pet. at 23. Even if it did, that does not mean the matter is ripe. In *Toilet Goods Association v. Gardner*, 387 U.S. 158, 163-64 (1967), the Court confronted a purely legal question concerning the authority of an administrative agency, but held that judicial review was inappropriate pending actual application of the challenged regulation, which would further illuminate its justification. Thus, the courts have refused to decide even "purely legal issues" in the absence of a concrete controversy.

remedies did not resolve their grievances, the case would be ripe, but it would be ripe on the basis of the full application of the administrative process.

This Court has firmly insisted:

> that an aggrieved party pursue his administrative remedy before the state agency and the state court prior to bringing his complaint to the federal court, so that the true interpretation of the state law may be known and its actual, as opposed to its theoretical, impact on the litigant authoritatively determined before the federal court undertakes to sit in judgment.

Public Utilities Commission v. United States, 355 U.S. 534, 539 (1958). The courts have been particularly reluctant to entertain challenges to state or local laws where, as here, "the administrative process, far from being exhausted, had [not even] begun." *Macauley v. Waterman Steamship Corp.*, 327 U.S. 540, 544-45 (1946). *See also, Hodel v. Virginia Mining and Reclamation Association*, 452 U.S. 264, 297 (1981) (the potential availability of administrative relief "confirms the conclusion" that constitutional challenges are "not ripe for judicial resolution"). Petitioners' failure to exhaust their administrative remedies thus is an independent bar to their suit.

Nor are the burdens of pursuing these remedies (Pet. at 25) any different than the typical burdens of complying with any permit requirement. In *Federal Trade Commission v. Standard Oil*, 449 U.S. 232 (1980), the Court refused to allow Standard Oil to challenge agency action prior to the completion of the agency's proceeding. It characterized Standard Oil's complaint about the burden and expense of participating in that

proceeding as "part of the social burden of living under government." 449 U.S. at 244. The Court further observed that "the effect of the judicial review sought by Standard Oil Company is likely to be interference with the proper functioning of the agency and a burden for the courts" and "intervention also leads to piecemeal review which at the least is inefficient and on completion of the agency process might prove to have been unnecessary." *Id.* at 242.

5. *Pacific Gas and Electric Company v. State Energy Resources Conservation and Development Commission*, 461 U.S. 190 (1983), relied upon by petitioners (Pet. at 24-25), further illustrates why petitioners' claims are unripe for judicial review. As petitioners note in their brief, the Court did review one statutory provision which created an absolute moratorium on the construction of nuclear power plants by conditioning their certification on the development of waste disposal technologies. Pet. at 24. However, in that instance, there was no administrative relief available to the utility petitioners to remove the absolute bar created by that provision. In the instant case, there are numerous contingencies which make it impossible to determine whether any of the ordinances will ever bar the siting of onshore petroleum facilities, including administrative relief available to oil companies whose projects are denied. *See, supra,* at 10.

On the other hand, in *Pacific Gas and Electric*, the Court specifically declined to entertain a challenge to another provision which created a process for reviewing the nuclear waste storage capacity at each nuclear power plant proposed. Despite the fact that the petitioners claimed -- as the petitioners claim here -- that the State was prohibited as a matter of law from even requiring that the utilities undergo such a process, the Court held that the matter was unripe in advance of the specific

application of that law to a particular project. 461 U.S. at 203.

6. The circumstances in San Luis Obispo County which petitioners advance in support of their petition do not show that any of these ordinances have become "unchallengeable" under the Ninth Circuit's decision, but only that petitioners seek gratuitous, advisory opinions from the courts. They acknowledge that Shell opted for a site in Santa Barbara County rather than pursuing a permit in San Luis Obispo County or its State appeal remedies. They ask "why indeed should the companies be precluded from 'servicing' a lease from an adjacent county, pending a determination of the validity of the ordinance which kept them out of San Luis Obispo in the first place." Pet. at 17. Obviously, Shell is not going to build a facility in Santa Barbara and then "move" it to San Luis Obispo if it gets a favorable decision. WSPA apparently thinks Shell should be able to abort its pursuit of a permit in San Luis Obispo, move its project to Santa Barbara, and *then* sue San Luis Obispo without first exhausting all of the permit requirements in San Luis Obispo and its rights of appeal to the Coastal Commission and without any stake in the outcome. What prevents this is the requirement of a case or controversy and the bar against advisory opinions.[24]

---

[24] The two trade associations in this case, who were not themselves involved in sponsoring the project in San Luis Obispo, can scarcely have any greater rights than Shell to seek judicial review at this premature stage. *See, Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 476 n.14 (1982). WSPA argues, however, that it should be able to pursue Shell's claim, even after the site was abandoned, because there are other unnamed companies who may later be in Shell's position. Thus, it cites *Franks v. Bowman Transportation Co., Inc.*

(continued...)

7. Surely, WSPA's *impatience* cannot serve as a substitute for a concrete case or controversy. The Ninth Circuit ordered a remand regarding the San Luis Obispo ordinance "because the relevant facts are not adequately developed in the record before us." Pet. at 19. Yet petitioners seek to invoke this Court's plenary review without making any effort to show that the record is in fact well enough developed to address this situation without further fact finding by the district court.[25] WSPA

---

[24](...continued)
424 U.S. 747 (1976) and *Sosna v. Iowa*, 419 U.S. 393 (1974) for the proposition that cases are not moot so long as there is a probability of recurrence for any member of a class "where a case is brought in a representative capacity on behalf of a class or group of plaintiffs." Pet. at 21. These cases are inapposite for several reasons. First, it is clear that WSPA's challenge is not one capable of repetition but which evades review. Any one of WSPA's members can obtain review by submitting a permit application for an onshore facility and pursuing to conclusion the administrative procedures which are already in place. Second, in both *Franks* and *Sosna*, a class had been certified pursuant to Rule 23, Federal Rules of Civil Procedure, but the named plaintiff had lost his personal stake in the outcome of the case. This Court's decision on mootness relied expressly on the class certification and noted that the unnamed members of the class were identifiable individuals, individually named in the record many of whom had individually participated in the litigation. *See, Franks* at 753-56. In *Franks*, the Court distinguished a finding of mootness in an earlier decision, *Board of School Comm'rs v. Jacobs*, 420 U.S. 128 (1975), because there no class had been certified. "As the action had not been properly certified as a class action by the District Court, we held it moot." 424 U.S. at 754 n.6.

[25] In *United States Parole Comm'n v. Geraghty*, 445 U.S. 388 (1980), the Court of Appeals remanded for further factual development and this Court declined for that reason to address the issues subject to the remand.

also filed suit in state court seeking to overturn the San Luis Obispo ordinance on the grounds that it was improperly approved under State law, but it has determined not to pursue that case.[26] If any company had cared enough about any of the other ordinances, it could have applied for a permit, obtained a vote, and if it had lost there, it could have sought review before the Coastal Commission. If it had lost before the Coastal Commission, it would then have had a ripe claim for review.

What petitioners ignore in their impatience to get to court is that projects might be *approved* in a future referendum, or in a subsequent administrative process.[27] Why should a "window of opportunity to sue" (Pet. at 7) be afforded WSPA or its members when the project may be approved through the administrative process thus making litigation unnecessary?

8. Even were they ripe, petitioners' claims under the supremacy and commerce clauses would not merit the

---

[26] In that action, *Western Oil & Gas Assoc. v. California Coastal Commission, et al.* (San Francisco Superior Court No. 897952), all of the parties have agreed to a stay because of the pendency of this action, but the stipulation provides that the stay may be lifted at any time by any party.

[27] For example, in two separate elections held in Santa Barbara County, measures which sought to restrict specific onshore petroleum facilities proposed by Exxon and Chevron were defeated at the polls, and those projects were allowed to go forward. *See,* Guzman Dec. [ER #62] at 10.

plenary review requested of this Court.[28] *See* Pet. at 19. In the absence of any actually denied project, both claims rest on the insupportable proposition that a constitutionally offensive interference is worked (on, respectively, a federal statute and interstate commerce) by an essentially procedural requirement that development approval be sought through a referendum process, and should that fail, administratively from a state commission. Neither claim has any merit.

Petitioners' argument that the ordinances are preempted by the Outer Continental Shelf Lands Act ("OCSLA") founders on the intent of Congress, manifest in OCSLA, to leave local land use authority unabridged. The normal presumption against implied preemption (*see, Chicago & N.W. Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981)) is especially strong for local exercises of the police power. *See, e.g., Hillsborough County v. Automated Medical Labs.*, 471 U.S. 707, 715 (1985); *Pacific Gas and Electric*, 461 U.S. at 206; *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978). In devoting OCSLA exclusively to the regulation of offshore activities, Congress was unequivocal that "[r]elevant State, local, regional, or other bodies have, or should have, appropriate procedures and mechanisms to review

---

[28] The extraordinary nature of this request, in the absence of any relevant district or appeals court opinion, is particularly apparent in light of this Court's great reluctance to grant certiorari even when just the Court of Appeals has not concluded its deliberations. *See*, Supreme Court Rule 11 ("petition . . . will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate settlement in this Court"). The suggestion is nonsensical that by *vacating* the district court's opinion on these constitutional claims, the Court of Appeals somehow enshrined it as the "only authority" (Pet. at 19) on the subject.

[proposed onshore facilities and operations] and *grant or deny permission for them to occur*." H.R. Rep. No. 95-590, 95th Cong., 2nd Sess. 166, *reprinted in* 1978 U.S. Code Cong. & Admin. News 1450, 1575 (emphasis added).[29] Nor can petitioners save their claim by arguing that the ordinances conflict with federal *policy*. Pet. at 18. The Supreme Court has consistently refused to regard mere general pronouncements of national policy as preempting state regulation.[30] *See, Pacific Gas and Electric*, 461 U.S. at 223; *Commonwealth Edison Company v. Montana*, 453 U.S. 609, 633 (1981); *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 133 (1978).

Petitioners' commerce clause argument is equally wide of the mark. Local communities retain their traditional police power, irrespective of the incidental non-protectionist impact that might work on interstate commerce. *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 443-44 (1960); *see also, Commonwealth Edison*, 453 U.S. at 619; *Exxon Corp.*, 437 at 125. The ordinances here are indisputably not protectionist: they affect in-state and out-of-state companies alike. *See* First Amended Complaint, Pet. at 91a, ¶ 2 (alleging that at least some of the companies that do "most of the actual

---

[29] OCSLA itself also explicitly recognizes "the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses . . . and of related development activity. . . ." 43 U.S.C. § 1332(5).

[30] Moreover, petitioners' theory about what constitutes "federal policy" is belied by the fact that, as the Court of Appeals noted, "[i]t is the congressional moratorium, not the ordinances, that is prohibiting [leasing] activity at this time." Pet. at 18a. *See also, supra*, notes 9 and 10 and accompanying text.

work" onshore and off, in support of oil development in federal waters, are located in California).[31]

9. Fundamentally, the granting of certiorari would be inappropriate because, as this Court observed in another context:

> [I]t would be particularly pointless for us to engage in such inquiry here when it is clear that the States have been allowed to retain authority. . . . In these circumstances, it should be up to Congress to determine whether a State has misused the authority left in its hands.

Pacific Gas and Electric, 461 U.S. at 216.

---

[31] The cases relied upon by petitioners, one from 1911 and another from 1923, are wholly inapposite. The only one of any currency does not even involve the commerce clause. *See Hicklin v. Orbeck*, 437 U.S. 518, 523 (1978). The other two "established that the location in a given State of a resource bound for interstate commerce is an insufficient basis for preserving the benefits of the resource exclusively or even principally for that State's residents." *Id.*, at 532-33. That principle has no application here.

CONCLUSION

Respondents submit that the petitioners have failed to present this Court with a ripe case or controversy and have failed to exhaust available administrative remedies. This action does not merit the plenary review which petitioners seek, and the petition for writ of certiorari should be denied.

Respectfully submitted,

ROGER BEERS
KATHRYN LODATO
Attorneys for County of Sonoma, et al.

JOHN K. VAN DE KAMP
Attorney General
JOHN A. SAURENMAN
Deputy Attorney General
Attorneys for the State of California

NATHANIEL S.W. LAWRENCE
Attorney for Natural Resources Defense Council, Inc., and the League for Coastal Protection

No. 90-805

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF SAN LUIS OBISPO and CITY OF SANTA CRUZ,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITIONERS' REPLY BRIEF

RECEIVED
HAND DELIVERED
JAN 4 - 1991
OFFICE OF THE CLERK
SUPREME COURT, U.S.

PHILIP K. VERLEGER
(Counsel of Record)
DONNA R. BLACK
BRADLEY R. HOGIN
BAKER & HOSTETLER,
MCCUTCHEN BLACK
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Counsel for Petitioners Western States Petroleum Association and National Ocean Industries Association

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

		Page
I.	PRELIMINARY	1
II.	THE ORDINANCES ARE FINAL LEGISLATIVE ENACTMENTS. NO ADMINISTRATIVE PROCEEDINGS CAN ADDRESS ADEQUATELY THE ISSUES RAISED BY THIS LAWSUIT	3
III.	THE LOCAL ORDINANCES ARE RIPE FOR A CONSTITUTIONAL CHALLENGE	5
IV.	RESPONDENTS INCORRECTLY ARGUE THAT THE CASE IS MOOT	6

TABLE OF AUTHORITIES

CASES: Page

Aleknagik Natives Ltd. v. Andrus, 648 F.2d 496, 499 (9th Cir. 1980) 4

Doe v. Maher, 793 F.2d 1470, 1490 (9th Cir. 1986), *aff'd*, 494 U.S. 305, 108 S.Ct. 592 (1988) 4

Franks v. Bowman Transportation Co., Inc., 424 U.S. 747, 752-57, 96 S.Ct. 1251, 47 L.Ed. 2d 444 (1976) 6

Lujan v. National Wildlife Federation, —— U.S. ——, 110 S.Ct. 3177 (1990) 5

National Solid Wastes Management Association v. Alabama Department of Environmental Management, 910 F.2d 713 (11th Cir. 1990) 7

Sosna v. Iowa, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed. 2d 532 (1974) 6

Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911) 6

United States Parole Comm'n v. Geraghty, 445 U.S. 388, 398-400, 100 S.Ct. 1202, 63 L.Ed. 2d 479 (1980) 6

Weinstein v. Bradford, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L.Ed. 2d 350 (1975) 6

Wilson v. Marana Unified School Dist. No. 6, 735 F.2d 1178, 1181 (9th Cir. 1984) 4

STATUTES

California Public Resources Code
§ 30514 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-805

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,
Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO,
CITY OF MONTEREY, CITY OF MORRO BAY,
CITY OF SAN LUIS OBISPO and CITY OF SANTA CRUZ,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITIONERS' REPLY BRIEF

I. PRELIMINARY.

There is a fundamental, underlying question presented in this case: whether states can preclude offshore oil and gas development by the United States by imposing procedural burdens to deny access to the land onshore. From

the Mexican to the Oregon border, respondents, through the local ordinances at issue in this case, seek to construct an unbroken wall to block out offshore oil. One project belonging to several members of petitioner Western States Petroleum Association ("WSPA") has already been defeated by the initiative requirement in the San Luis Obispo County ordinance.

Despite the urgent need for resolution, the primary thrust of respondents' argument—just as it was in the Court of Appeals and the district court—is to avoid a decision in the case. They argue that the case is not ripe; that it is premature; that it is moot; and finally that there is some imaginary administrative remedy. They assert that the San Luis Obispo County election on the San Miguel project was a nullity; that it had no effect on this case; that it is completely "hypothetical" to assume that other projects may meet a similar fate under other ordinances. There is nothing hypothetical, however, about the fact that an election occurred in San Luis Obispo County; that 56 percent of the population voted against the San Miguel project; and that the project as voted on was no longer viable.

There is also nothing hypothetical about the fact that the effect of the Court of Appeals' decision is practically to foreclose challenge of the subject ordinances. That decision effectively holds that possession of a lease is not sufficient to enable a company to challenge these ordinances, even if large amounts of money have been spent on purchase, exploration and development of the lease. A "proposed development" is necessary but, as in the case of the San Miguel project, if a project proponent loses an election and decides to take his project elsewhere, then even that project no longer qualifies as the basis for a challenge. Thus, a full-fledged project which is denied access and is forced to go somewhere else is not enough, but neither is possession of a lease without a project. And, after the election defeat of the San Miguel project

and what that says about other projects being accepted in the San Luis Obispo area, no rational company would propose another project there. The result is that the ordinances will accomplish their objective of closing the door to San Luis Obispo County and its cities and yet will never be subject to challenge.[1]

II. THE ORDINANCES ARE FINAL LEGISLATIVE ENACTMENTS. NO ADMINISTRATIVE PROCEEDINGS CAN ADDRESS ADEQUATELY THE ISSUES RAISED BY THIS LAWSUIT.

Respondents spend a good deal of time arguing that petitioners' Writ should be denied because petitioners failed to exhaust their administrative remedies under state law, particularly the California Coastal Act. Even if there was some requirement under the facts of this case that administrative remedies be exhausted—and we submit there is not—respondents are less than candid to suggest that this truly presents a viable alternative for petitioners in this case. First, the requirement in Cal. Pub. Res. Code § 30514 for California Coastal Commission ("Commission") review of the ordinances before inclusion in the local coastal programs is not enforceable by WSPA. Accordingly, WSPA members have no administrative means to force the local governments to submit any of the local ordinances to review by the Commission. Second, even if the local ordinances are reviewed and approved by the Commission, this has no effect on pipelines and other portions of energy projects located outside the coastal zone.

---

[1] The Court of Appeals held that the ordinances of the City of San Luis Obispo and the City of Morro Bay were valid. This, coupled with the election defeat of the San Miguel project, has a significant negative impact on the ability of WSPA members to move forward with onshore facilities for projects in any of the affected areas, including San Luis Obispo County and the cities of San Luis Obispo and Morro Bay. Accordingly, it is appropriate to request a review of both the city and county ordinances at this time.

Third, although the Coastal Act does provide in certain limited circumstances for appeal of denial of permit applications by local governments, respondents themselves admit that these provisions do not cover all of the components of energy projects at issue here and they are, of course, completely irrelevant for ordinances that are not submitted to the Commission and are simply enforced as local law. Finally, even if the Commission overrides a local government and allows siting of a particular facility, that is in no sense a review of the underlying validity of the ordinances challenged here. One project may be allowed to go forward, but the ordinances will still be in effect to block other projects. Thus, resort to the remedies claimed by respondents will merely bypass the issue—unconstitutionality of the ordinances—presented here.[2]

"[E]xhaustion is not required if administrative remedies are inadequate or not efficacious . . . where pursuit of administrative remedies would be a futile gesture . . . [w]here irreparable injury will result unless immediate judicial review is permitted. . . ." *Aleknagik Natives Ltd. v. Andrus*, 648 F.2d 496, 499 (9th Cir. 1980) (citations omitted). Where an adequate administrative remedy is unavailable, a litigant need not exhaust an inadequate remedy. *Doe v. Maher*, 793 F.2d 1470, 1490 (9th Cir. 1986), aff'd, 494 U.S. 305, 108 S.Ct. 592 (1988); *Wilson v. Marana Unified School Dist. No. 6*, 735 F.2d 1178, 1181 (9th Cir. 1984). No adequate remedy for the unconstitutional ordinances at issue exists outside of this lawsuit.

---

[2] Respondents' own prior admissions cast doubt on their argument here. Footnote 11 of respondents' original brief in support of their motion to dismiss the complaint, at pp. 9-10, states: "Nor do all the defendants in this case agree that their ordinances are subject to Coastal Commission review and override." Clerk's Record (Document No. 21).

III. THE LOCAL ORDINANCES ARE RIPE FOR A CONSTITUTIONAL CHALLENGE.

Respondents argue, as they did in the courts below, that this case is not ripe. But their position, correctly understood, is nothing more than a plea for delay. Thus, respondents attempt to persuade this Court that it is proper to defer review until WSPA's members have spent millions of dollars on purchasing and attempting to develop outer Continental Shelf ("OCS") leases and service facilities before they can determine their rights to develop the onshore support facilities needed to make the projects feasible.[3] Respondents gain a great deal by this. For, to the extent that WSPA's members determine that they cannot risk such huge sums and decide not to proceed—the only prudent course given the result on Shell Oil Company's San Miguel project—the respondents will have achieved their goal of stopping oil and gas development on the OCS, completely insulated from any judicial review of their conduct. It cannot be disputed that the ordinances apply as law today, and all must alter their conduct according to their directions.[4]

---

[3] On page 13 of their opposition, respondents assert that the record in the district court demonstrated that ample sites not subject to challenged ordinances still exist along the California coast and that the ordinances were adopted in areas unsuitable for onshore pretroleum facilities. These assertions are unfounded. The supplemental declaration of Douglas Henderson filed January 4, 1988 in support of plaintiffs' motion for partial summary judgment provides detailed testimony that plainly refutes respondents' sweeping assertions. A copy of Mr. Henderson's supplemental declaration is provided as Appendix G filed by petitioners in their Appendix to Petition for Writ of Certiorari. *See* pages 63A-77A of Appendix.

[4] Respondents rely on the recently decided case of *Lujan v. National Wildlife Federation*, —— U.S. ——, 110 S.Ct. 3177 (1990) to support their position that this case is not ripe. However, *Lujan* has nothing to do with land use ordinances like those at issue here. Further, in *Lujan*, the Court found against plaintiff because it had not demonstrated that it was adversely affected by

IV. RESPONDENTS INCORRECTLY ARGUE THAT THE CASE IS MOOT.

Respondents are unable to offer support for the Ninth Circuit's holding that the case as to San Luis Obispo County is moot. They do not dispute the fundamental proposition that a lawsuit is not moot if the problem is capable of repetition. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 398-400, 100 S.Ct. 1202, 63 L.Ed. 2d 479 (1980); *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911). Where a case is brought in a representative capacity on behalf of a class or group of plaintiffs, the probability of recurrence is determined by reference to the entire class.[5]

It is alleged in the complaint and not denied that there are outstanding leases in the San Luis Obispo area held by WSPA's members and numerous service companies, represented by the National Ocean Industries Association, who are deprived of the opportunity to work on those leases. The complaint further alleges that discoveries have been made in at least five different units formed out of those leases and that projects are ongoing. It simply cannot be true that the case of the northern counties (where there are no leases) is not moot because of the possibility of lease sales while the controversy as to San

---

the challenged agency action. Here, petitioners have clearly established such adversity on the basis of the election defeat of the San Miguel project and the holding of leases by other WSPA members in which development is significantly hampered by the ordinances.

[5] See *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed. 2d 532 (1974) [The Court concluded the case was not moot, because appellant sought to litigate the constitutionality of a state law requirement in a representative capacity]; *Franks v. Bowman Transportation Co., Inc.*, 424 U.S. 747, 752-57, 96 S.Ct. 1251, 47 L.Ed. 2d 444 (1976) [the Court allowed the representative action even where the individual representative had been shown to have no claim].

Luis Obispo is moot even though there are existing leases currently undergoing development.[6]

Respectfully submitted,

PHILIP K. VERLEGER
(Counsel of Record)
DONNA R. BLACK
BRADLEY R. HOGIN
BAKER & HOSTETLER,
McCUTCHEN BLACK
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Counsel for Petitioners
Western States Petroleum
Association and
National Ocean Industries
Association

Dated: January 4, 1991

---

[6] Respondents say little about the Supremacy Clause and Commerce Clause violations alleged here, perhaps because recent case law supports petitioners' position. *See National Solid Wastes Management Association v. Alabama Department of Environmental Management*, 910 F.2d 713 (11th Cir. 1990), where an Alabama statute which prevented commercial waste management facilities from accepting hazardous wastes generated in states other than Alabama was held violative of the Commerce Clause as a potectionist measure. The Court rejected that state's claim that the statute was directed toward a legitimate state concern—assurance of sufficient disposal facilities for the state and minimizing danger to public health by uncontrolled and untreated hazardous wastes coming in from other states—and held, instead, that the statute discriminated among out-of-state waste generators and imposed on these generators the burden of conserving Alabama's remaining hazardous waste disposal capacity. *Id.* at 720. The local ordinances at issue here are similar protectionist measures which seek to isolate coastal communities from the effects of offshore oil development.